2003-04

Federal Personnel Handbook

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Published by Federal Handbooks, Inc.

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Updated: September 2003

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Federal Appointments

As an employer, the Federal government is unique. In the private sector, there are generally two types of "appointments" – the "at will" appointment and the "contract" appointment. The vast majority of private sector employees hired by a company or firm are hired as "at will" employees. While they may not realize it, this typically means that the private-sector employee can be fired for any reason, or no reason, but not for an illegal reason. As a practical matter, then, most "at will" workers can be fired at any time, for almost any reason. There are some limits, of course - an "at will" employee cannot be fired because of his or her race, color, religion, sex, national origin, age (if over the age of 40), or disability. In addition, "at will" employees generally cannot be fired for "blowing the whistle" on illegal practices within a company. Private sector employers may provide their employees with further rights through employment manuals and other means, but on average, at will employees have few legal rights when it comes to their employment.

Private sector "contract" employees generally are fewer in number than at will employees, but they usually have more job protections. An example of a "contract" employee may be a doctor or nurse who is hired for a specific term and cannot be removed before the term expires unless it is for "good cause." "Good cause" is often spelled out in the contract as misconduct or poor performance. The company usually has specific procedures in place to investigate and adjudicate a claim of misconduct or poor performance against such employees.

Of course, many private sector employees belong to unions, and the labor agreement between the union and their employer usually gives the employee additional rights beyond what they would have as "at will" or contract employees, such as the right to arbitration.

Appointments within the Federal sector, however, are a little more complex. When hiring a new employee, a Federal department or agency must classify the employee's appointment as "career," "career conditional," "temporary," or "term." Moreover, there are "excepted service appointments" – appointments made under Schedules A, B, and C. Each of these appointments is explained in detail below. As a Federal employee, it is important to know which type of appointment you have, since your appointment affects your job rights.

At the end of this chapter, some additional topics, such as appointments of non-citizens and dual employment (holding more than one federal job), will also be discussed.

Career and Career-Conditional Appointments

Permanent employees are generally hired into the Federal government under a career-conditional appointment. A career-conditional employee must complete three years of substantially continuous service before becoming a full career employee. This 3-year period is used to determine whether or not the Government is able to offer the employee a career.

Service Requirement for Career Tenure

An employee must have 3 years of substantially continuous creditable service to become a career employee, i.e. obtain career tenure. The 3-year period must begin and end with nontemporary

employment in the competitive service. Generally, substantially continuous creditable service must not include any break in service of more than 30 calendar days. If an employee does not complete the 3-year period, a single break in service of more than 30 calendar days will require the employee to serve a new 3-year period. (Periods of time in a nonpay status are not breaks in service and do not require the employee to begin a new 3-year period. However, they may extend the service time needed for career tenure.) Career-conditional employees automatically become career employees upon completion of this service requirement. Employees with career tenure have a higher retention standing during layoffs.

Required Probationary Period

The first year of service of an employee who is given a career-conditional appointment is considered a probationary period. The probationary period is really the final and most important step in the examining process. It affords the supervisor an opportunity to evaluate the employee's performance and conduct on the job, and to remove the person without undue formality, if necessary. A person who is transferred, promoted, demoted, or reassigned before completing probation is required to complete the probationary period in the new position. Prior Federal civilian service counts toward completion of probation if it is in the same agency, same line of work, and without a break in service.

Care should be taken to distinguish the 1-year probationary period from the 3-year career-conditional period. The probationary period is used to determine the employee's ability and fitness required for permanent Government service. The 3-year career-conditional period is established only to measure the employee's interest in, and the Government's ability to provide, a career in the Federal service. (For more information on the probationary period, see Chapter 2, "The Probationary Period.")

Acquiring Competitive Status

Competitive status is a person's basic eligibility for assignment (e.g., by transfer, promotion, reassignment, demotion, or reinstatement) to a position in the competitive service without having to compete with members of the general public in an open competitive examination. When a vacancy announcement indicates that status candidates are eligible to apply, career employees and career-conditional employees who have served at least 90 days after competitive appointment may apply. Once acquired, status belongs to the individual, not to a position.

Temporary and Term Appointments

Temporary and term appointments are used to fill positions when there is not a continuing need for the job to be filled. Neither type of appointment is a permanent one, so they do not give the employee competitive status or reinstatement eligibility. Because temporary and term employees do not have status, they may not apply for permanent appointments through agency internal merit promotion procedures, which are used for filling positions from the ranks of current and former permanent Federal employees. However, qualifying experience gained while employed in a temporary or term position is considered when applying later for a permanent position.

Defining "Temporary Appointment"

A temporary appointment is an appointment lasting one year or less, with a specific expiration date. It is appropriate when an agency expects there will be no permanent need for the employee. An agency may make a temporary appointment to:

- fill a short-term position that is not expected to last more than one year; or

- meet an employment need that is scheduled to be terminated within one or two years for reasons such as reorganization, abolishment, or the completion of a specific project or peak workload; or
- fill positions that involve intermittent (irregular) or seasonal (recurring annually) work schedules.

A temporary employee does not serve a probationary period and is not eligible for promotion, reassignment, or transfer to other jobs.

Time Limits

Generally, an agency may make a temporary appointment for a specified period not to exceed one year. The appointment may be extended up to a maximum of one additional year. Appointments involved with intermittent or seasonal work may be extended indefinitely if extensions are made in increments of one year or less and the employment totals less than six months (1,040 hours) in a service year.

How Temporary Employees Are Selected

Most vacancies are filled through open competitive examination procedures. However, an agency may give a temporary appointment noncompetitively to certain individuals (i.e., a reinstatement eligible, certain present and former Peace Corps employees, a 30% disabled veteran, and veterans eligible for a veterans' readjustment appointment).

Benefits

Temporary employees are eligible to earn leave and are covered by Social Security and unemployment compensation, but do not receive the other fringe benefits provided to career civil service employees. Current law allows temporary employees to purchase health insurance after they have one year of temporary service, but the employee must pay the full cost with no Government contribution. Employees are not eligible for coverage under the Federal Employees' Group Life Insurance program or the Federal Employees Retirement System.

Term Appointments

Under term employment, the employing agency hires the term appointee to work on a project that is non-permanent in nature. The employment is for a limited period of time, lasting for more than one year but for no longer than four years. Some reasons for making a term appointment may include:

- project work;
- extraordinary workload;
- scheduled abolishment of a position;
- reorganization;
- uncertainty of future funding;
- contracting out of the function.

How Term Employees Are Selected

Most vacancies are filled through open competitive examination procedures. However, an agency may give a term appointment noncompetitively to certain individuals (i.e., reinstatement eligibles, veterans eligible for a veterans readjustment appointment, and 30% disabled veterans). The employment of a term employee ends automatically on the expiration of their term appointment. The first year of service is considered a trial period and the agency may terminate a term employee at any time during the trial period.

Benefits For Term Employees

Term employees are eligible to earn leave and generally have the same benefits as permanent employees when it comes to health and life insurance, within-grade increases, and Federal Employees Retirement System and Thrift Savings Plan coverage.

Excepted Service: Schedules A, B and C Appointments

The "excepted service" consists of all positions in the Executive Branch that statute, the President, or OPM has specifically excepted from the competitive service or the Senior Executive Service. This section covers excepted service positions in Schedules A, B, and C.

Schedule C Positions and Appointments

Employees in the excepted service who are subject to change at the discretion of a new Administration are commonly referred to as "Schedule C" employees. Schedule C positions are excepted from the competitive service because they have policy-determining responsibilities or require the incumbent to serve in a confidential relationship to a key official. Most Schedule C positions are at the GS-15 level and below. Appointments to Schedule C positions require advance approval from the White House Office of Presidential Personnel and OPM, but appointments may be made without competition. OPM does not review the qualifications of a Schedule C appointee - final authority on this matter rests with the appointing official.

Agencies may separate Schedule C appointees from employment at any time if the confidential or policy-determining relationship between the incumbent and his or her superior ends. Schedule C appointees are not covered by statutory removal procedures and generally have no rights to appeal removal actions to the Merit Systems Protection Board. This is true regardless of veterans' preference or length of service in the position. Agencies should consult their General Counsel or OPM's General Counsel on Schedule C separations.

Other Excepted Service Positions and Appointments

In addition to the policy-determining or confidential positions described above, Congress, the President, or OPM can except certain agencies and groups of positions from the competitive service and the Senior Executive Service. These exceptions are made for a variety of reasons, none of which relates to policy-determining or confidential factors.

Positions Excepted by Statute and the President. Examples of positions that have been excepted by statute include those in the Foreign Service; the Federal Bureau of Investigation; the Tennessee Valley Authority; the General Accounting Office; the Postal Service; and certain employees within the Department of Veterans Affairs. Most of these positions are under separate merit systems. Examples of Presidential exceptions include jobs overseas held by foreign nationals.

Positions Excepted by OPM. There are two other categories of positions that OPM has administratively excepted from the competitive service because it is not practical to hold competitive examinations for them. These are Schedule A and Schedule B positions.

-- Schedule A Positions. Examples include chaplains, teachers in military dependent school systems overseas, faculty positions of service academies, and certain positions at isolated localities. Attorney positions are also in Schedule A because OPM is prohibited in its appropriations legislation from spending funds to examine for attorney positions.

-- Schedule B Positions. Schedule B is used primarily for career-related work study positions.

The procedural and appellate rights governing the removal of Schedule A and B appointees vary. Employees with veterans' preference who have 1 year of qualifying service are entitled to statutory procedural and appellate rights if they are removed from the Federal service for conduct or performance reasons. In addition, the Due Process Amendments of 1990 [P.L. 101-376, August 17, 1990] gave procedural and appeal protections to many excepted service employees who do not have veterans preference, provided they have completed 2 years of qualifying service.

Excepted Service Agencies

Most Federal civilian positions are part of the competitive civil service. To obtain a Federal job, you must compete with other applicants in open competition. Some agencies, however, are excluded from the competitive civil service procedures. This means that these agencies have their own hiring system that establishes the evaluation criteria they use in filling their internal vacancies. These agencies are called "excepted service agencies."

If you are interested in employment with an excepted service agency, you should contact that agency directly. OPM does not provide application forms or information on jobs in excepted service agencies or organizations. Some examples of excepted service agencies and departments are the: Federal Reserve; Central Intelligence Agency; National Security Agency; U.S. Nuclear Regulatory Commission; Post Rates Commission; Tennessee Valley Authority; and Library of Congress.

Employment of Noncitizens

The Federal government gives strong priority to hiring U.S. citizens and nationals, but non-citizens may be hired in certain circumstances. Agencies considering non-citizens for Federal employment in the competitive service must follow the usual selection procedures and also meet the requirements of all three of the following: (1) immigration law; (2) an appropriations act ban on paying certain non-citizens; and (3) an executive order restriction on appointing non-citizens in the competitive service. Agencies considering non-citizens for Federal employment in the excepted service and Senior Executive Service must meet the first two requirements. In addition, agencies are responsible for applying any citizenship requirements that may appear in their individual agency's authorization and appropriation laws.

Several factors determine whether a Federal agency may employ a noncitizen. They are: Executive Order 11935 requiring citizenship in the competitive civil service, whether the position is in the competitive service, the excepted service or Senior Executive Service, the annual appropriations act ban on paying aliens from many countries, and the immigration law ban on employing aliens unless they are lawfully admitted for permanent residence or otherwise authorized to be employed.

Executive Order 11935 on the Competitive Civil Service

Under Executive Order 11935, only United States citizens and nationals (residents of American Samoa and Swains Island) may compete for competitive jobs. Agencies are permitted to hire noncitizens only when there are no qualified citizens available. A noncitizen hired in the absence of qualified citizens may only be given an excepted appointment, and does not acquire competitive civil service status. He or she may not be promoted or reassigned to another position in the competitive service, except in situations where a qualified citizen is not available. The noncitizen may be hired only if permitted by the appropriations act and the immigration law.

Excepted Service and Senior Executive Service
As explained above, some Federal agencies (among them the United States Postal Service, the Tennessee Valley Authority and the Federal Bureau of Investigation), and some types of positions (for example, lawyers and chaplains) are excepted from OPM procedures for filling jobs. An agency may hire a qualified noncitizen in the excepted service or Senior Executive Service, if it is permitted to do so by the annual appropriations act and the immigration law.

Many agencies have executive level positions in the Senior Executive Service.

Appropriations Act Restrictions
Congress prohibits the use of appropriated funds to employ noncitizens within the United States. Certain groups of noncitizens are not included in this ban. They are:

- Persons who owe permanent allegiance to the United States (for example, natives of American Samoa and Swains Island).
- Aliens from Cuba, Poland, South Vietnam, countries of the former Soviet Union, or the Baltic countries (Estonia, Latvia, and Lithuania) lawfully admitted to the United States for permanent residence.
- South Vietnamese, Cambodian or Laotian refugees paroled into the United States after January 1, 1975.
- Nationals of the People's Republic of China who qualify for adjustment of status pursuant to the Chinese Student Protection Act of 1992.
- Citizens of Ireland, Israel, or the Republic of the Philippines.
- Nationals of countries currently allied with the United States in a defense effort, (as determined by the Office of the Assistant Legal Adviser for Treaty Affairs, Department of State).
- International broadcasters employed by the U.S. Information Agency.
- Translators employed temporarily.
- People employed up to 60 days on an emergency basis in the field service.

Also, some agencies are exempt from these restrictions.

Although the groups above are not prohibited from being paid from agency appropriated funds, group members are still subject to the requirements of Executive Order 11935, and to the immigration law, as specified below.

Immigration Law Requirements on Employing Citizens and Aliens
For any work to be performed in the United States, immigration law requires private and public employers to hire only individuals who are eligible to be employed. Those individuals are:

- a citizen (either by birth or naturalization) or national of the United States,
- an alien assigned by the Immigration and Naturalization Service (INS) to a class of immigrants authorized to be employed (aliens who are lawfully admitted for permanent residence by INS are the largest class of aliens in this category), or
- an individual alien who is expressly authorized by INS to be employed.

Questions about an individual's citizenship, nationality, immigration status, and eligibility for employment under the immigration law, should be directed to the local INS office. Although an alien may be authorized to work under the immigration laws, he or she is still subject to the requirements of Executive Order 11935 and appropriations act restrictions as stated above.

Noncitizens who have questions about employment eligibility should contact the agency in which they are interested in working for further guidance.

Dual Employment

Generally federal employees, civilian and military, are prohibited from receiving pay from more than one federal government source. The laws on dual employment apply to agencies in the executive, legislative and judicial branches, corporations owned or controlled by the government, and nonappropriated fund organizations under the jurisdiction of the armed forces.

Civilian federal employees can hold more than one government job in some limited situations. An individual may have more than one federal appointment, but may receive pay from more than one civilian job only when:

- the jobs total no more than 40 hours of work a week, Sunday to Saturday (excluding overtime); or
- there is an authorized exception.

This means an employee on leave without pay (LWOP) from one position may be paid for another position. Paid leave, however, counts toward the 40-hour-per-week limitation unless there is an authorized exception.

Authorized exceptions to the limitation on pay for more than 40 hours a week include:

- exceptions in law, e.g., with agency approval federal employees can work for the U. S. Postal Service;
- emergency services relating to health, safety, protection of life or property, or national emergency;
- expert and consultant jobs when working different hours as an intermittent employee; and
- fee paid on other than a time basis (lump-sum pay for a report, research product or service not based on the number of hours or days worked).

Also, in unusual circumstances, federal agencies can make exceptions to obtain required personal services when they cannot be readily obtained otherwise.

Civilian Federal Employees Working in Outside (Nonfederal) Jobs

Federal employees shall not engage in outside employment or activities that conflict with official duties and responsibilities. Many federal agencies have written policies that allow outside employment, especially when it is not related to the federal work and will not result in, or create the appearance of, a conflict of interest. Agency policies may require employees to receive prior approval for outside employment even when co-workers have similar outside jobs. Ask your supervisor, agency ethics official, and agency personnel office for further information.

Uniformed Service Members Holding Civilian Government Jobs

Members of a Uniformed Service (Army, Navy, Marines, Air Force, etc.) on active duty may not receive pay from another government position, except during terminal leave, or unless specifically authorized by law. Enlisted personnel may be employed part-time during off-duty hours in Department of Defense nonappropriated fund activities. Members of the Armed Forces Reserves and members of the National Guard may receive military pay and allowances in addition to pay from another government position.

Note: With appropriate agency approval, federal employees may work for the District of Columbia (D.C.) government.

Employment of Retirees (Dual Compensation Issues)

Retirees can work for the federal government. However, federal civilian retirees will have their salary reduced by the amount of their annuity unless an exception is approved. In addition, retirees under age 70 may have their Social Security check reduced if their annual earnings exceed the established limit.

Federal Retirees under CSRS and FERS

Most retirees under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS) will have their hourly pay reduced by the hourly rate of the annuity when reemployed by the federal government. These laws apply to federal jobs in the legislative, executive, and judicial branches (including government corporations, nonappropriated fund instrumentalities under the jurisdiction of the armed forces, and the U.S. Postal Service). Generally, the law requires that the employing agency reduce the retiree's hourly pay by the hourly rate of their annuity. This reduction equals the retiree's annual annuity divided by 2087. For example, if a job's gross pay is $15.80 per hour and a retiree's hourly annuity rate is $5.80, then the retiree's gross pay is reduced to $10.00 per hour. If a retiree works for a year, then his or her retirement is recalculated with this added service.

Note: If retirement was due to involuntary separation or disability, the annuity may terminate upon reemployment. Retirees in this situation should check with the employing agency or call OPM's Retirement Information Office toll-free at 1-888-767-6738 or at (202) 606-0500, if calling from the Washington, D.C. area.

Military Retirees

Retirees of U.S. Uniformed Services are now treated as other retirees (see next heading). Prior reductions in military retired pay were repealed by P.L. 106-65 in October 1999.

Other Retirees - Private Sector, State, and Local Government

Generally, when other retirees become a federal employee there is no reduction in their federal pay or in their retirement pay or annuity. However, paid work may reduce Social Security retirement, survivors or disability benefits if earnings exceed the established limits. For details, contact the Social Security Administration at 1-800-772-1213.

Exceptions for CSRS and FERS Retirees

Federal agencies may request authority to waive the salary reduction in special and unusual circumstances. The law limits waivers to "positions for which there is exceptional difficulty recruiting or retaining a qualified employee" and to temporary employment while "the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances." Generally, to qualify for an exception, a retiree must be the only qualified applicant available or be uniquely qualified for the job. The USAJOBS (www.usajobs.opm.gov) vacancy notice will usually indicate when an agency has waiver authority or anticipates requesting it.

Retaining Reinstatement Eligibility

Retirees who obtained federal reinstatement eligibility before they retired do not lose it because they retire.

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The Probationary Period

As indicated in the previous chapter, the first year of service of an employee who is given a career or career-conditional appointment and the first full year of work for an employee serving a conditional appointment under Schedule A Authority or a term appointment is considered to be a probationary period. The probationary period serves as the appraisal period for probationary and trial period employees.

Purpose

The probationary period is viewed as the final important step in the examining process. The probationary period provides the test of actual job performance and an opportunity to observe the employee's conduct. It protects the Government from giving career status to a person who is found in actual practice to lack ability, fitness, or suitability for permanent Government service.

Competitive appointees selected from a certificate are required to complete a probationary period of 1 year. This requirement for a 1-year probationary period applies to career or career-conditional appointments where the selection is made from a certificate of eligibles, regardless of whether the appointee had previously completed a probationary period. Exceptions are made in some cases involving reinstatements, appointments under special authorities, and conversions to career or career-conditional employment.

Each employee given a conditional appointment under Schedule A Authority will serve a 1-year trial period. If the appointee had previous service under any type of appointment in the same type of work without a break of more than 30 calendar days, that service will be credited toward completion of the trial period.

The probationary or trial period can be extended if the employee is in a nonpay status for more than 22 calendar days for purposes other than the Federal Employees Compensation Act or military service. The period is generally lengthened for an equivalent amount of time in excess of the 22 calendar days.

Separation of Employees

If, during the probationary period, the employee demonstrates a lack of either fitness or the capacity to acquire fitness for permanent employment, the supervisor may initiate action to separate the employee from service. The supervisor may take this action at any time during the period for problems with performance, conduct, or general character traits. Generally, the employee must be given at least 90 calendar days to work under performance standards before action can be taken for performance problems. In any event, action should be taken in sufficient time for the employee to be notified that they will not be retained before the expiration of the probationary period.

The effective date of the separation must be no later than the day before the employee's regularly scheduled workday prior to the last day of the probationary period. Otherwise, separation must be processed under procedures for the separation of an employee who has completed the probationary period. Supervisors who wish to initiate a separation action should consult with their servicing employee relations specialist for guidance.

If an employee is to be separated during the probationary period for deficiencies in performance or conduct after entrance on duty, the employee must be notified in writing. The reasons for separation, the effective date of separation, and the agency's conclusions on the inadequacies of the performance or conduct must be included, as a minimum, in the written notice. Merit System Protection Board (MSPB) appeal rights should also be included.

In some instances, an employee may be separated from service based on conduct prior to employment. The rule is that an employee whose separation is based in whole or in part on conduct before employment is entitled to advance notice, a specific and detailed statement of reasons, the right to reply, consideration of his or her reply, a decision, and information about appeal rights to the MSPB. The written notice must state the reasons in sufficient detail for employees to be able to understand them and reply to them. Employees must be told that they may reply in writing and submit affidavits in support of their reply. The notice must identify who is authorized to receive the reply and state the applicable time limits. Bona fide consideration must be given to the employee's answer. If the charges are rebutted successfully, the employee should be notified that they are being dropped. Mitigating circumstances may justify a lesser penalty. If employees are to be separated, they must be given a written decision. The decision must state the reasons, identify the charges or reasons relied on by the agency, and the effective date of the separation. MSPB appeal rights must be included.

Probationary Employee Appeal Rights

Probationary employees who are being separated from service may appeal their separation to the MSPB under certain, limited circumstances. Probationary employees may appeal to the MSPB if they believe their termination was based on partisan political reasons or their marital status. Probationary employees who are being terminated for reasons based in whole or in part on conditions arising before appointment may appeal to the MSPB on the grounds that the termination was not carried out using the proper procedural steps.

Additionally, a probationary employee may appeal to the MSPB a termination which the employee alleges was based on discrimination because of race, color, religion, sex, national origin, age (if the employee was at least 40 years old at the time of the alleged discriminatory action), or handicapping condition, if the discrimination charge is raised in addition to one of the claims above (an allegation of partisan political or marital status discrimination, or a claim that the procedures were not properly followed).

It is important to remember that once the probationary period ends, a supervisor who wishes to terminate an employee for misconduct or poor performance must generally follow more stringent rules, since satisfactory completion of the probationary period typically gives employees a "property right" in their federal employment.

3

Pay and Leave

This chapter provides information on Federal employee pay and leave, specifically basic salary levels, locality pay, pay flexibilities available to address staffing difficulties, pay for reemployed annuitants, types of leave, and severance pay. It is important to remember that the federal government is comprised of several different pay systems and schedules. The primary pay systems and schedules are the General Schedule, the Federal Wage System, the Senior Executive Service, and the Executive Schedule. While the different pay systems and schedules are linked – and, most importantly, are capped by the Executive Schedule - they all cover different groups of employees. Each of these is explained in more detail below.

Federal Pay

Executive Schedule. The Executive Schedule sets the pay rates for the top federal officials, from the U.S. President, Vice-President, and Cabinet Officers on down to heads and sub-heads of federal agencies. Below the President and Vice-President, the Executive Schedule consists of Levels I through V, with Level I being the highest paid, and Level V being the lowest paid. In 2003, Executive Schedule salaries range from $125,400 (level V) to $171,900 (level I).

For the purposes of federal employee pay, the importance of the Executive Schedule is that it serves as a cap on federal employee pay. For example, below federal agency and department heads are a group of employees who are members of the "Senior Executive Service" or "SES." These employees have their own pay scale, which is discussed below, but members of the SES by law cannot be paid more than Level IV of the Executive Schedule for base pay, and Level III of the Executive Schedule for base plus locality pay. Thus, Level III of the Executive Schedule serves as a "cap" on the amount that members of the SES can receive for base plus locality pay.

Congressional and federal judicial salaries are also related to the Executive Schedule pay system, with most Members of Congress and federal district court judges receiving Level II pay. (We say "most" because Congressional majority and minority leaders and the Speaker of the House earn more than the Members of Congress and Senators who do not serve in leadership roles.)

In sum, while the Executive Schedule does not directly affect most federal employees' pay, it does serve as the uppermost limit, or "cap," on how much they can receive in pay.

Senior Executive Service. The Senior Executive Service pay schedule is capped by the Executive Schedule. Members of the SES can earn no more than Level IV for base pay; Level III for base plus locality pay; and Level I for total compensation. (The Level I cap comes into play when a member of the SES is given an allowance or a monetary award, such as a Distinguished Rank Award, which comes with a sizable bonus.) For the SES pay schedule, the pay grades are ES-1 through ES-6, with ES-6 being the highest pay grade, and ES-1 being the lowest. By law, the lowest pay rate, ES-1, cannot be less than 120 percent of the minimum rate for GS-15 (grade 15, step 1 of the General Schedule).

The President adjusts SES pay rates annually. Agency heads are responsible for setting basic pay for the SES at one of six rates (ES-1 through ES-6). In 2003, SES basic salaries range from $116,500 (ES-

1) to $134,000 (ES-6), not including locality payments. In setting these pay rates, agencies consider such factors as the qualifications, performance, duties, and responsibilities of the employee.

In calendar year 2003, SES members in the U.S. (excluding Alaska and Hawaii) received the same locality-based comparability payments as the General Schedule. However, basic pay plus locality pay for SES members is capped at $142,500 for 2003 (Executive Level III). Locality pay is included in calculations for retirement, life insurance, thrift savings, severance pay, advances in pay upon appointment, and lump-sum annual leave payments upon separation. It is not included in calculations for performance awards. Total compensation (including salary, awards, and relocation, recruitment or retention allowances) cannot exceed Executive Level I ($171,900 in CY 2003) in any one year. Excess amounts due to the employee are paid in the following year(s).

Senior-Level and Scientific or Professional (ST) Positions. The Senior-Level (SL) and Scientific or Professional (ST) pay system includes high-level positions without executive responsibilities, as well as positions that the law or the President excludes from the SES. Agency heads may set the pay of an SL or ST employee at any rate within a range fixed by statute. In 2003, the basic pay for these positions ranges between $102,168 and $134,000, excluding locality payments.

SES, SL/ST Pay Cap Raised to the Vice Presidential Level Under Certain Conditions. Be aware that section 1322 of the Homeland Security Act of 2002 (Public Law 107-296, November 25, 2002) provides, under certain conditions, a higher aggregate limitation on pay for members of the Senior Executive Service (SES) and employees in senior-level (SL) and scientific or professional (ST) positions. **However, until these conditions are met, the aggregate limitation on pay for all employees remains at the rate for level I of the Executive Schedule ($171,900 in 2003)**.

Section 1322 of the Act provides that the aggregate pay limitation established in 5 U.S.C. 5307 for SES and SL/ST employees in an agency may be the total annual compensation payable to the Vice President if OPM, with the concurrence of the Office of Management and Budget (OMB), certifies that the agency has a performance appraisal system that makes meaningful distinctions based on relative performance. The law gives OPM and OMB joint responsibility for issuing regulations, as necessary, including the criteria and procedures for obtaining certification of a performance appraisal system.

OPM plans to issue regulations and guidance jointly with OMB on the requirements for obtaining certification of agency performance appraisal systems so that agencies may use the higher aggregate pay limitation for SES and SL/ST employees. Until an agency's performance appraisal system has been certified under the new regulations, the aggregate limitation on pay for all employees remains at the rate for level I of the Executive Schedule.

General Schedule. Most federal employees fall under the "General Schedule" or "GS" pay scale. The General Schedule is the pay scale for professional or "white collar" employees, and is comprised of 15 "grades." The lowest grade is 1, and the highest is 15. Each grade has 10 "steps." Employees advance from one grade to another as they are promoted and their responsibilities increase. Employees move to higher steps within their grade level based on the length of their tenure and acceptable job performance. Advancement to either a higher grade or step means an increase in pay.

Because within-grade, or "step," increases are based in part on an employee's tenure, there are waiting periods before an employee can move to the next higher step. Before an employee can move to a step 2, 3, or 4, the employee must wait 52 weeks (1 year). To move to a step 5, 6, or 7, the employee must

wait 104 weeks (2 years). And to be advanced to a step 8, 9, or 10, the employee is required to wait 156 weeks (3 years).

Pay raises for the General Schedule are determined annually each year by Congress and the President. Once the pay increase is set by law, the amount is allocated by the President between base pay and locality pay. The maximum rate of basic pay in 2003 is $110,682 (GS-15, step 10). A new GS employee generally enters at the first step of the appropriate grade.

Federal Wage System. The Federal Wage System (FWS) covers federal "blue collar" workers. The system was developed to make the pay of these workers comparable to prevailing private sector rates in each local wage area. Before the FWS, there was no central authority to establish wage equity for federal trade, craft, and laboring employees. In 1965, President Johnson ordered the former Civil Service Commission to work with federal agencies and labor organizations to study the different agency systems and combine them into a single wage system.

Congress established the FWS by law in 1972. It created a joint labor-management Federal Prevailing Rate Advisory Committee (FPRAC) with an independent Chairman. Agencies and labor unions are members of the Committee. FPRAC studies all matters pertaining to prevailing rate determinations and advises the Director of the Office of Personnel Management (OPM) on appropriate pay policies for FWS employees.

The regular pay plan covers most trade, craft, and laboring employees in the executive branch. The FWS does not cover Postal Service employees, legislative branch employees, or employees of private sector contracting firms. To set pay for this group, OPM prescribes basic policies and procedures to ensure uniform pay-setting. OPM specifies procedures for agencies to design and conduct wage surveys, to construct wage schedules, to grade levels of work, and to administer basic and premium pay for employees.

OPM defines the geographic boundaries of individual local wage areas and reviews survey job descriptions to ensure that they are accurate and current. In addition, OPM works with agencies and unions to schedule annual local wage surveys in each wage area. Wage adjustments become effective in accordance with what is commonly referred to as the 45-day law. This law states that the government has 45 working days to put FWS pay adjustments into effect after each wage survey starts. Wage schedules are effective with the first pay period after the 45-day period expires. The Department of Defense (DOD) is the lead agency responsible for issuing FWS wage schedules.

Under the FWS, the agency bases federal employee pay on what private industry is paying for comparable levels of work in the local wage area. Employees are paid the full prevailing rate at step 2 of each grade level. Step 5, the highest step in the FWS, is 12 percent above the prevailing rate of pay.

Special Pay Authorities. Some agencies have special authorities that govern the setting of pay for all or certain employees. For example, the Administrator of the Federal Aviation Administration (FAA) may set pay for FAA employees. The President may set the pay of certain White House employees.

Locality Pay. As a general rule, federal employees' pay consists of two primary parts – "base pay" and "locality pay." While base pay is the same for each grade and step across the country, locality pay varies by geographic location. Thus, while a GS-9, step 5, employee in Kansas City will earn the same base pay as another GS-9, step 5, employee in Boston, the Boston employee will end up earning

approximately $1,908 more annually because of locality pay. Locality pay is, in essence, the federal government's way of acknowledging that in many geographic areas federal employees are paid less than they would be paid in the private sector for a comparable position, and therefore locality pay is added to make up for part of the difference. Locality pay is not paid to employees overseas, or to those in Hawaii, Alaska or Puerto Rico.

Most Federal employees - including GS, SES, and Senior-Level employees, but excluding officials paid under the Executive Schedule - are eligible for locality pay in addition to their base pay. As indicated above, these payments apply only in the 48 contiguous States. In 2003, the locality payments range from 4.02 to 4.87 percent. The maximum locality-adjusted rate of pay for GS employees is the rate for Executive Schedule level IV ($134,000); for SES and SL employees the maximum rate is the rate for Executive Schedule level III ($142,500).

Pay rates outside the continental U.S. are 10% to 25% higher. Also, certain hard-to-fill jobs, usually in the scientific, technical, and medical fields, may have higher starting salaries.

Pay Flexibilities. Agencies may use a number of discretionary pay flexibilities to deal with well-documented staffing difficulties. Specific statutory and regulatory conditions govern the use of each of these flexibilities, including agency justification and documentation requirements. Agencies, however, are cautioned to exercise these flexibilities judiciously, especially when hiring employees other than career employees. These payments are subject to public scrutiny and third-party review.

Advance Payments. Agencies may provide for the advance payment of basic pay (including any locality payment) covering not more than two pay periods to any individual who is newly appointed to a position, except for appointment as agency head.

Above Minimum Hiring Rates – GS. Agencies may appoint individuals to General Schedule positions at a step above the first step of their grade based on the employee's superior qualifications or a special need of the agency for the employee's services. Agencies may make such appointments at any appropriate GS grade. Agencies may set pay at the higher step only upon initial appointment or upon reappointment after a 90-day break in service.

Pre-Employment Interviews -- Payment of Travel and Transportation Expenses. Agencies may pay travel and transportation expenses for travel to and from pre-employment interviews to any individual they consider for employment. Agencies may also pay the travel expenses of a new appointee from his or her place of residence at the time of selection or assignment to the duty station.

Recruitment and Relocation Bonuses. Agencies may make a lump-sum payment of up to 25 percent of basic pay to a newly appointed employee (i.e., a recruitment bonus) or to an employee who must relocate (i.e., a relocation bonus) to fill a position that would otherwise be difficult to fill. In return, the employee must sign an agreement to fulfill a period of service with the agency (there is a 6-month minimum for recruitment bonuses). Agencies may pay recruitment and relocation bonuses to employees under the General Schedule, prevailing rate (wage), senior-level and scientific or professional (SL/ST), Senior Executive Service, and Executive Schedule. Recruitment and relocation bonuses are subject to the aggregate limitation on total pay that an employee may receive in a calendar year.

Retention Allowances. Agencies may make continuing (i.e., biweekly) payments of up to 25 percent of basic pay to an employee with unusually high or unique qualifications, or to an employee who is serving a special agency need that makes it essential to retain the employee if he or she would be likely to leave the Federal government in the absence of a retention allowance. Agencies may pay retention allowances to employees under the General Schedule, Senior Executive Service, senior-level and scientific or professional (SL/ST), prevailing rate (wage), and Executive Schedule pay systems. Retention allowances are also subject to the aggregate limitation on total pay that an employee may receive in a calendar year. Note: Agencies may not pay a retention allowance to the head of a Federal agency.

Reemployed Annuitants. In most cases, when Federal retirees (covered by the Civil Service Retirement System or the Federal Employees Retirement System) are re-employed in the Federal service, their salaries are reduced by the amount of their annuities. The reduction also applies when retirees are appointed as experts or consultants. However, there are some exceptions, so if reemployment is being considered, the employing agency's Human Resources Office should be consulted.

Separation Payments

Certain payments may be payable to an individual who is separated from the Federal service, as described below.

Severance Pay. Most Federal employees are entitled to severance pay. Employees who are covered by the severance pay law are entitled to a series of payments equal to their normal salary following an involuntary separation that is not for misconduct or unacceptable performance. Presidential appointees, noncareer SES appointees, Schedule C employees, and other, similar political appointees are not eligible for severance pay.

To be eligible for severance pay, an employee must be serving under a qualifying appointment, have completed at least 12 months of continuous service, and be removed from Federal service by involuntary separation. An employee who declines a "reasonable offer" or who is eligible for an immediate annuity from a Federal civilian retirement system or from the uniformed services is not eligible to receive severance pay. A "reasonable offer" is a position within two actual grades of the employee's current grade level in the same commuting area and agency.

The basic severance pay computation is as follows. An employee will receive one week of severance pay at the rate of basic pay for the position he or she held at the time of separation for each full year of service through 10 years. For each full year of service beyond 10 years, the employee will receive two weeks of pay. For each full 3 months of service beyond the final full year, the employee will receive 25 percent of the otherwise applicable amount.

For example, if an employee has worked for the Federal government for 17 years and 7 months, and is involuntarily terminated and otherwise eligible for severance pay, the severance pay would be computed as follows:

10 weeks of severance pay (1 week of severance pay multiplied by first 10 years of service)
plus
14 weeks of severance pay (2 weeks of severance pay multiplied by 7, for the years of service from year 11 to year 17)

plus

1 week of severance pay (1 week of severance pay for 6 full months of service beyond 17 years)

totals

25 weeks of severance pay.

For employees with variable work schedules or variable rates of basic pay, the calculation will differ because, in general, it will be based on the weekly average during the previous 26 biweekly pay periods immediately preceding the separation.

Age Adjustment Allowance

In computing severance pay, there is also an age adjustment allowance for employees over the age of 40. Therefore, in addition to the basic severance pay allowance, employees over the age of 40 will receive an extra amount consisting of 2.5 percent of the basic severance pay allowance for each full 3 months of age over 40 years.

Lifetime Limitation

A Federal employee may receive a maximum of 52 weeks of severance pay in his or her lifetime. Thus, if an employee is separated from service and receives 30 weeks of severance pay before beginning another job with the Federal government, and then becomes eligible for severance pay a second time, he or she can receive a maximum of 22 weeks (52 minus 30) of severance pay after being separated from service for a second time.

Creditable Service for Severance Pay Purposes

The following types of service are creditable for computing an employee's severance pay:

(a) Civilian service as an employee, excluding time during a period of nonpay status that is not creditable for annual leave accrual purposes;
(b) Service performed with the United States Postal Service or the Postal Rate Commission;
(c) Military service, including active or inactive training with the National Guard, when performed by an employee who returns to civilian service through the exercise of a restoration right provided by law, Executive order, or regulation;
(d) Service performed by an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard who moves to a position within the civil service employment system of the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days; and
(e) Service performed with the government of the District of Columbia by an individual first employed by that government before October 1, 1987, excluding service as a teacher or librarian of the public schools of the District of Columbia.

Paying Severance

Severance payments are generally paid at the same pay period intervals that salary payments would be made if the individual were still employed by the Federal government. The payments are made by the former employing agency, and are subject to appropriate deductions for income and Social Security taxes.

Termination of Severance Pay

An individual's entitlement to severance pay ends when: (1) he or she is reemployed by the Federal government or begins working for the D.C. government; (2) he or she has exhausted the amount of

severance pay to which he or she is entitled based on years of service; or (3) he or she has reached the lifetime limitation of 52 weeks.

Lump-Sum Payments for Unused Annual Leave. Employees who separate from Federal service and who are covered by the Federal leave system are entitled to a lump-sum payment for unused annual leave. The lump-sum payment equals the pay the employee would have received on a biweekly basis had he or she remained in Federal service on annual leave. This payment excludes any allowances that are paid for the sole purpose of encouraging an employee to remain in government service, such as retention allowances and physicians comparability allowances. Most Presidential appointees are excluded from coverage under the Federal leave system.

A current Federal employee who receives a Presidential appointment does not receive a lump-sum payment for his or her unused annual leave. The unused annual leave is held in abeyance for recredit if and when the employee is subsequently reemployed in a position covered by the Federal leave system. If the individual separates from Federal service while under a Presidential appointment, he or she will receive a lump-sum payment for unused annual leave based on the rate of pay in effect for the position the employee held immediately before the employee accepted the Presidential appointment.

When an employee who received a lump-sum payment for unused annual leave is reemployed in the Federal service before the end of the annual leave period covered by the lump-sum payment, he or she must refund a portion of the lump-sum payment. The refunded portion covers the period between the date of reemployment and the expiration of the lump-sum leave period. The employing agency will recredit to the employee an amount of annual leave that is equal to the days or hours of work remaining between the date of reemployment and the expiration of the lump-sum leave period.

Leave

General Schedule employees, members of the SES, and Schedule C appointees are all covered by the Federal leave system, as are most other Federal employees. Officers and employees who are appointed by the President are not covered by the Federal leave system. Presidential appointees do not earn annual and sick leave and cannot be charged leave for absences from work.

Annual and Sick Leave. Employees earn 13, 20, or 26 days of annual leave a year, depending on their years of service. Annual leave accrues incrementally, i.e., 4, 6, or 8 hours every 2 weeks. SES members may carry over up to 90 days of annual leave to the next leave year; GS employees may carry over up to 30 days of annual leave.

In addition, employees earn 13 days of sick leave each year (which accumulates without limit in succeeding years). Sick leave also accrues incrementally, i.e., 4 hours every 2 weeks. In certain situations, employees may use sick leave for family care purposes. They may use a total of up to 12 weeks of sick leave each year to care for a family member with a serious health condition. They may also use sick leave for adoption or bereavement.

Family and Medical Leave. Under the Family and Medical Leave Act of 1993 (FMLA), an employee is entitled to a total of 12 workweeks of unpaid leave during any 12-month period for: (1) the birth of a child and care of the newborn; (2) the placement of a child with the employee for adoption or foster care; (3) the care of an employee's spouse, son or daughter, or parent with a serious health condition; and (4) an employee's own serious health condition that makes him or her unable to perform the duties

of his or her position. An employee may substitute annual leave or sick leave, as appropriate, for unpaid leave under the Family and Medical Leave Act.

Leave Transfer and Leave Bank Programs. An employee who has a personal or family medical emergency and who has exhausted his or her own leave may receive donated annual leave from other Federal employees through voluntary leave transfer or leave bank programs. All agencies must have a leave transfer program. In addition, an agency may also choose to establish a leave bank for its employees.

Other Leave. In addition, employees are entitled to court leave, military leave, leave for bone marrow or organ donation, and other types of leave. You can obtain additional information on the Federal Government's leave programs by reviewing FederalHandbook.com's Federal Benefits Handbook or Federal Leave Handbook.

Unscheduled Leave

When the federal government announces an "unscheduled leave policy," employees not designated as "emergency employees" may take annual leave or leave without pay without the prior approval of their supervisors. In addition, each agency has discretionary authority to determine when it is appropriate to grant a reasonable amount of excused absence to employees who are unavoidably delayed in arriving for work.

The federal government usually announces an "unscheduled leave policy" due to adverse weather conditions, such as a snowstorm, which would cause employees to be late for work, or unable to come in. Factors such as distance, availability of transportation, and the success of other employees in similar situations are taken into consideration by agencies in determining the amount of excused absence to grant. Employees are responsible for notifying their supervisors of their situation.

It is up to each supervisor to determine what is a reasonable amount of time to allow for excused absences for late arrival to ensure that the employee's work requirements are fulfilled and that the agency's operations are conducted efficiently and effectively. Employees designated as "emergency employees" are expected to report for work on time.

Washington, D.C. Area Dismissal and Closure Procedures
For employees in the Washington, D.C. area, OPM has devised specific procedures to be followed when a significant number of employees are prevented from reporting for work on time, or when agencies are forced to close. Such situations include adverse weather conditions (snow emergencies, severe icing conditions, floods, earthquakes, and hurricanes) and other disruptions of Government operations (air pollution, disruption of power, interruption of public transportation, etc.).

These procedures apply to employees (including employees telecommuting from an alternative worksite) in all executive agencies located inside the Washington Capital Beltway. They do not apply to employees of the U.S. Postal Service, the government of the District of Columbia, or private sector entities, including contractors. Facilities outside the Beltway may prefer to develop their own plans, since they are subject to different emergency and traffic conditions than those inside the Beltway. In unusual situations, however, OPM may issue guidelines affecting facilities outside the Beltway as well. OPM says that it is essential that Federal agencies in the metropolitan area comply with this area-wide plan and the announced decisions on dismissal or closure. They say that agencies should avoid

independent action because any change in the work hours of Federal workers in the Washington, DC, area requires careful coordination with municipal and regional officials to minimize disruption of the highway and transit systems.

Agencies that find it necessary to exclude certain offices or activities from this plan should notify OPM of such exemptions and update such notices when necessary. Application of this guidance must be consistent with the provisions of applicable collective bargaining agreements or other controlling policies, authorities, and instructions.

Emergencies Before the Workday Begins
OPM will provide one of the following five announcements to the media when an emergency occurs before the workday begins. (For additional guidance on excused absence, see the paragraph following this table.)

Emergency Announcement	**What Announcement Means**	**Additional Guidance**
1. "Federal agencies in the Washington, DC area are OPEN for business as usual. Employees are expected to report for work on time."	Federal agencies will open on time, and employees are expected to report for work as scheduled.	Agencies should be as flexible as possible in approving annual leave or LWOP for employees who face emergency situations or other hardships (e.g., when schools/child care centers open late or are closed).
2. "Federal agencies in the Washington, DC area are OPEN for business as usual under an UNSCHEDULED LEAVE policy. Employees may take leave without prior approval."	Federal agencies will open on time, but employees not designated as "emergency employees" may take annual leave or leave without pay (LWOP) without the prior approval of their supervisors. "Emergency employees" are expected to report for work on time.	Employees must inform their supervisors if they plan to take annual leave or LWOP. If an employee fails to report for work and has not informed the supervisor of his or her plans to take leave, the agency may charge the employee absence without leave (AWOL).
3. "Federal agencies in the Washington, DC area are OPEN for business as usual under an ADJUSTED HOME DEPARTURE policy. Employees are requested to leave home ## hours later than their normal departure time."	Federal agencies will open on time, but employees not designated as "emergency employees" should adjust their normal home departure time consistent with the announcement. Employees who arrive late for work will be excused without loss of pay or charge to leave. Agencies have discretionary authority to determine the amount of excused absence to grant in such cases. "Emergency employees" are expected to report for work on time.	Agencies may use OPM's "Handbook on Alternative Work Schedules, December 1996" (section 12, "Flexible Work Schedules," paragraph 1) to determine the normal arrival time of employees on flexible work schedules. The handbook is available on OPM's website at http://www.opm.gov/oca/aws.

Emergency Announcement	What Announcement Means	Additional Guidance
4. "Federal agencies in the Washington, DC area are **OPEN** for business as usual under an **ADJUSTED HOME DEPARTURE/ UNSCHEDULED LEAVE** policy. Employees are requested to leave home ## hours later than their normal departure time. Employees may take leave without prior approval."	Federal agencies will open on time, but employees not designated as "emergency employees" should adjust their normal home departure time consistent with the announcement. Employees who arrive late for work will be excused without loss of pay or charge to leave. Agencies have discretionary authority to determine the amount of excused absence to grant in such cases. Employees may take annual leave or LWOP without the prior approval of their supervisors. "Emergency employees" are expected to report for work on time.	Employees must inform their supervisors if they plan to take annual leave or LWOP. Employees who take leave will be charged leave for the entire workday. Agencies may use OPM's "Handbook on Alternative Work Schedules, December 1996" (section 12, "Flexible Work Schedules," paragraph 1) to determine the normal departure time of employees on flexible work schedules. The handbook is available on OPM's website at http://www.opm.gov/oca/aws.
5. "Federal agencies are **CLOSED**."	Employees not designated as "emergency employees" (including telecommuting employees at an alternative work site) are excused from duty without loss of pay or charge to leave. "Emergency employees" are expected to report for work on time.	Workdays on which a Federal activity is closed are nonworkdays for leave purposes. Employees who are on approved leave before the closure must be granted excused absence. This does not apply to employees on LWOP, military leave, suspension, or in a nonpay status. Employees on alternative work schedules (AWS) are **not** entitled to another AWS day off "in lieu of" the workday on which the agency is closed.

Excused Absence

Agencies may excuse an employee without loss of pay or charge to leave (i.e., grant a reasonable amount of excused absence) if the employee is unavoidably delayed in arriving for work. Factors such as distance, availability of transportation, the need to make alternative child care arrangements, and the success of other employees in similar situations should be considered in determining the amount of excused absence to grant. *However, employees have no entitlement to excused absence.* Agencies must notify employees of the procedures to be followed in this situation.

Emergencies During Normal Work Hours

When an emergency situation occurs during normal work hours, OPM may announce that Federal agencies in the Washington, D.C. area are operating under an "**ADJUSTED WORK DISMISSAL"** policy. When this announcement is made, employees should be dismissed relative to their normal departure times from work. For example, if a 3-hour **"ADJUSTED WORK DISMISSAL"** policy is announced, workers who normally leave their offices at 5:00 p.m. would be authorized to leave at 2:00 p.m. (For additional guidance on excused absence, see the paragraph following the table below.)

How Leave Is Handled Under An "ADJUSTED WORK DISMISSAL" Policy

Employee Action	Leave Policy
Employee is on duty.	Agency should grant excused absence for the remainder of the workday following the employee's authorized time of dismissal even if the employee is scheduled to take leave later in the day.
Employee leaves before official announcement of **"ADJUSTED WORK DISMISSAL"** policy **or** before the time set for his or her dismissal.	The agency should charge leave for the remainder of the workday following the time of the employee's departure.
Employee is scheduled to return from leave after official announcement of **"ADJUSTED WORK DISMISSAL"** policy, but before the time set for his or her dismissal.	The agency should grant excused absence for the remainder of the workday following the time of the official announcement through the remainder of the workday, even if the employee is scheduled to take leave again later in the workday.
Employee is telecommuting at an alternative worksite.	Agency should grant excused absence for the remainder of the workday following what would be the employee's authorized time of dismissal.
Employee is absent on previously approved leave (annual, sick, or leave without pay (LWOP)) for the entire workday.	The agency should continue to charge the employee leave for the entire workday.
Employee fails to report for work.	The agency should charge AWOL or permit the employee to request annual leave, sick leave, or LWOP, as appropriate, for the entire workday. Exceptions to this policy should be made only in unusual circumstances.

Excused Absence

Agencies may excuse an employee without loss of pay or charge to leave (i.e., grant a reasonable amount of excused absence) to avoid hardships. For example, excused absence may be granted to employees who need to leave before official announcement of an "Adjusted Work Dismissal" policy or before the employee's authorized time of dismissal because younger children are released from school/child care centers earlier than the announced dismissal time and no alternative forms of child care are available. *However, employees have no entitlement to excused absence.* Agencies must notify employees of the procedures to be followed in these situations.

Lunch Or Other Meal Periods

A lunch or other meal period is an approved period of time in a nonpay and nonwork status that interrupts a basic workday or a period of overtime work for the purpose of permitting employees to eat or engage in permitted personal activities. An agency may establish policies for meal periods for most white-collar and blue-collar employees.

The law does not provide employees with an explicit entitlement to a meal period. Each agency has the authority to establish its own requirements for meal periods. An agency may require or permit unpaid meal periods during overtime hours, and the policy may be different from the one for the basic workweek. For example, an agency could permit employees to work 8 overtime hours on a Saturday or

Sunday without any requirement for a meal period. In exceptional circumstances, an agency may permit employees to eat their meals while working.

Duration
In most circumstances, an agency is prohibited from scheduling a break in working hours of more than 1 hour during a basic workday. This limitation applies to lunch and other meal periods. An agency may permit or require shorter meal periods.

A basic workday is usually 8 hours, but the basic work requirement may be longer for certain days under alternative work schedules (i.e., flexible or compressed work schedules). The normal 1-hour meal period limitation does not apply if an agency permits an employee who works under a flexible work schedule to elect to take a longer unpaid meal period.

Combination with Rest Periods Prohibited
An agency may not extend a regularly scheduled lunch break by permitting an employee to take an authorized rest period (with pay) prior to or immediately following lunch, since a rest period is considered part of the employee's compensable basic workday. The lunch period may be extended only under limited circumstances.

Interruptions
Unpaid meal periods must provide bona fide breaks in the workday. If an employee is not excused from job duties, or if he or she is recalled to job duties, the employee is entitled to pay for compensable work, including work that is not de minimis in nature. Note that there is no authority to compensate employees for being placed on-call or being required to carry a pager or cell phone.

Restricted Areas
An agency may restrict employees to a limited area (such as a secure Government building or military installation) while in an on-call status during a meal period without creating an entitlement to pay for the meal period. See the exceptions below for certain firefighters and law enforcement officers.

Firefighters and Law Enforcement Officers
Meal periods during 24-hour shifts are compensable hours of work for firefighters paid under 5 CFR part 550, subpart M.
Meal periods are hours of work for FLSA nonexempt employees engaged in law enforcement activities who receive annual premium pay for administratively uncontrollable overtime.

Bona fide meal periods are not actual hours of work for criminal investigators who receive law enforcement availability pay.

Part-Time Employees
Agencies should establish policies stating whether meal periods will be required or permitted when part-time employees or employees who work under flexible work schedules have basic workdays that are less than 8 hours long.

Compensatory Time Off

Compensatory time off is: (1) time off with pay in lieu of overtime pay for irregular or occasional overtime work, or (2) when permitted under agency flexible work schedule programs, time off with pay in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work.

Compensatory time off may be approved in lieu of overtime pay for irregular or occasional overtime work for both FLSA exempt and nonexempt employees. Compensatory time off can also be approved for a "prevailing rate employee," but there is no authority to require that any prevailing rate (wage) employee be compensated for irregular or occasional overtime work by granting compensatory time off.

Mandatory
Agencies may require that an FLSA exempt employee receive compensatory time off in lieu of overtime pay for irregular or occasional overtime work, but only for an FLSA exempt employee whose rate of basic pay is above the rate for GS-10, step 10. No mandatory compensatory time off is permitted for wage employees or in lieu of FLSA overtime pay.

Regularly Scheduled Overtime
Compensatory time off may be approved (not required) in lieu of regularly scheduled overtime work only for employees, including wage employees, who are ordered to work overtime hours under flexible work schedules.

Time Limits
An agency may set time limits for an FLSA exempt or nonexempt employee to take compensatory time off. An agency may provide that an FLSA exempt employee who earns compensatory time off will lose entitlement to compensatory time off and overtime pay if it is not used within agency time limits, unless the failure was due to an exigency of the service beyond the employee's control. If compensatory time off is not taken by an FLSA nonexempt employee within agency time limits, an agency must pay the employee for overtime work at the overtime rate in effect during the pay period in which the overtime work was completed.

Amount
1 hour of compensatory time off is granted for each hour of overtime work.

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Performance Management

Performance management is the systematic process by which an agency involves its employees, as individuals and members of a group, in improving organizational effectiveness in the accomplishment of agency mission and goals.

Performance management integrates the processes an agency uses to:

1. Communicate and clarify organizational goals to employees;
2. Identify individual and, where applicable, team accountability for accomplishing organizational goals;
3. Identify and address developmental needs for individuals and, where applicable, teams;
4. Assess and improve individual, team, and organizational performance;
5. Use appropriate measures of performance as the basis for recognizing and rewarding accomplishments; and
6. Use the results of performance appraisal as a basis for appropriate personnel actions.

Each agency must have a performance appraisal system approved by OPM. Employees must be given a written performance plan containing performance elements and standards at the beginning of each appraisal period. Employees who fail to meet one or more critical performance elements of their job can be removed or demoted. Employees who meet or exceed the standards may be rewarded through a performance award program.

While the details of performance management may vary from agency to agency, they generally contain the following elements:

1. Establishing employee performance plans, including, but not limited to, critical elements and performance standards;
2. Communicating performance plans to employees at the beginning of the appraisal period;
3. Evaluating each employee during the appraisal period on the employee's elements and standards;
4. Recognizing and rewarding employees whose performance so warrants;
5. Assisting employees in improving unacceptable performance; and
6. Reassigning, reducing in grade, or removing employees who continue to have unacceptable performance, but only after an opportunity to demonstrate acceptable performance.

Performance Plans

Employees must have approved written, or otherwise recorded, performance plans based on work assignments and responsibilities. The plans must cover the official appraisal period. Performance plans must be provided to employees at the beginning of each appraisal period, normally within the first thirty days. The plans must include all critical and, where used, non-critical elements and related performance standards. They may also include additional performance elements and related performance standards, if any.

Performance plans may contain any combination of critical, non-critical, and additional elements and related performance standards. However, each performance plan must have at least one critical element that addresses individual employee performance.

Minimum Performance Period
Performance appraisal programs have a minimum period of performance that must be completed before a performance rating may be given. This period is usually 60 days.

Performance Elements
Performance elements are descriptive and relate to what needs to be done to achieve organizational goals and objectives. Performance elements may describe the actual work to be performed during the appraisal period. They may also describe major and important requirements of the job upon which an employee is rated for success.

There are three types of performance elements: critical and non-critical, which are used for assigning summary rating levels, and additional elements that are useful for communicating performance expectations and serving as the basis for granting performance awards.

Critical versus Non-critical: Critical elements are the key duties and responsibilities of the position, or the primary reason for its existence. Critical elements are so important to job success that unacceptable performance in those areas cannot be tolerated. Unacceptable performance on a critical element results in a determination that the employee's overall performance is unacceptable. Non-critical elements are often stated dimensions or aspects of individual, team, or organizational performance that are used in assigning summary rating levels. Non-critical elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.

Performance Standards
Performance standards are the management-approved expressions of the performance thresholds, requirements, or expectations that must be met for an employee to be appraised at a particular level of performance. There are clear expectations of what has to be done and how. Employees are usually involved in setting the standards under which their performance will be evaluated. Performance standards may include, but are not limited to, quality, quantity, timeliness, and manner of performance.

Performance Ratings
Performance ratings are the written, or otherwise recorded, appraisals of performance compared to the performance standards for each critical element and non-critical element in an employee's performance plan. To receive a performance rating, the employee must have had an opportunity to perform on these elements for a specified minimum period, usually sixty days. The appraisal methods often include at least one or more progress reviews during each appraisal period. A summary level must be assigned when a performance rating is prepared as part of a rating of record. Assigning a summary level at other times is optional.

Performance appraisal programs must establish criteria and procedures to address the performance of employees who are on official detail, who are transferred, and for other special circumstances established under the programs. In situations involving long-term training, managers and supervisors may develop a performance plan relating to the training. The performance plan could include achievement of specific training objectives. These objectives may be determined to be critical or non-critical.

Performance appraisal programs must establish criteria and procedures that address the performance of employees who are transferred at some time during the appraisal period. These criteria and procedures must provide for a transfer of the employee's most recent ratings of record, and any subsequent ratings,

when an employee transfers. The "rating of record" is the performance rating prepared at the end of an appraisal period for performance over the entire period. It requires the assignment of a summary level.

Performance Discussions

Performance appraisal programs should provide for communicating performance plans to employees. Performance plan elements, performance expectations and any goals and objectives must be discussed with employees at the beginning of the appraisal period. Supervisors must discuss the methods for appraising each critical and non-critical element during the appraisal period against the employee's performance standards. The appraisal methods must include, but are not limited to, one or more progress reviews during each appraisal period. To the maximum extent possible, progress reviews should be informative and developmental in nature and should focus on how to improve future performance.

Summary Levels

Each performance appraisal program provides a method for deriving and assigning a summary level performance rating. The summary level is based on the appraisal of the employee's performance on critical elements and, where applicable, non-critical elements.

Below "Fully Successful" Performance

Supervisors and managers may provide assistance to employees whose performance is determined to be below "Fully Successful" but above "Unacceptable" at any time during the appraisal period. Supervisors and managers must provide assistance to employees to improve unacceptable performance. Assistance may be provided at any time during the appraisal period that performance is determined to be at the "Unacceptable" level in one or more critical elements. Performance appraisal programs provide for reassigning, reducing in grade, or removing employees who continue to have unacceptable performance, but only after such employees have an opportunity to demonstrate acceptable performance. Performance appraisal programs must also provide for review and approval of "Unacceptable" ratings of record by a higher level management official.

Dealing With Poor Performers

Supervisors may be required to make decisions regarding an employee's poor job performance, misconduct, or delinquency. The type of problem will determine the appropriate action.

* Poor Job Performance: An employee's poor job performance may be caused by illness, disability, substance abuse, personality conflict, family problems, lack of training, low job morale or other problems. Depending on the cause, supervisors may counsel the employee in an effort to improve job performance, refer the employee to the Employee Assistance Program for counseling, or may seek a fitness-for-duty medical examination to determine physical or mental capability to do the job. A fitness-for-duty exam may be ordered only for employees whose jobs have medical standards or physical requirements. In all other cases, employees may be offered a fitness-for-duty exam, but they cannot be required to take one.

* Misconduct or Delinquency: An employee's misconduct or delinquency, such as tardiness, failure to properly request leave, insubordination, or theft, may require disciplinary action. This is covered in more depth in "Discipline and Adverse Actions" below.

* Failure to Meet Critical Job Elements: If an employee fails to meet one or more critical job elements of his or her performance plan, and the employee has been advised of those elements, the supervisor

needs to take action to try to help the employee improve his or her performance. Initial steps could include performance counseling, training, and/or closer supervision. If performance continues to be unacceptable, more severe actions could be reassignment, demotion, or removal.

There may be instances where problems involve both performance and conduct. In these cases, the supervisor may take action under either program, or both simultaneously.

Performance Improvement Period

A "Performance Improvement Period" or an "Opportunity to Improve" is provided when an employee's job performance is determined to be unacceptable in one or more critical performance elements. At any time during the appraisal cycle that an employee's performance is determined to be unacceptable, the supervisor must notify the employee of the critical element(s) for which performance is unacceptable, in what way the performance is unacceptable, and the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance. The supervisor must also offer assistance to the employee to improve unacceptable performance. A reasonable opportunity to improve period is generally 60-90 days. However, the duration of the performance improvement period is a judgment made by the supervisor based on such considerations as the employee's position; the extent of the performance problem; and the nature of the problem.

Some management actions that may be taken during the opportunity period to help the employee improve his or performance are closer supervision and counseling; personal task accomplishment demonstration or on-the-job training; supervisory or peer coaching; frequent feedback; special assignments; formal training; referral to the agency's Employee Assistance Program; and/or referral for a fitness-for-duty medical examination.

Note: The requirement to provide a "Performance Improvement Period" or "PIP" does not apply to probationary or trial period employees. Managers and supervisors should contact their servicing personnel office for guidance in such cases.

If the employee's performance improves to an acceptable level during the period of advance notice of reassignment, demotion, or removal, the supervisor may decide to keep the employee in his or her job, after considering the improved performance along with the employee's reply and other relevant factors. If this occurs and the employee continues to do an acceptable job for one year, the servicing personnel office must remove any record of unacceptable performance for which the action was proposed from its files on the employee.

Performance Based Actions

If the employee's performance continues to be unacceptable after the "Performance Improvement Period" has expired, and a medical or substance abuse problem does not exist, the supervisor may take one of the following actions: (1) reassignment to another position; (2) demotion; or (3) removal.

Demotion

Supervisors must comply with the following when issuing a proposed demotion to an employee:

- Provide the employee with a 30-day advance written notice of the proposed action. The notice must identify unsuccessful critical job element(s) and specific instances of unacceptable performance on which the action is based. The unacceptable performance must have occurred during the one-year period that ends on the date of the proposed notice;
- Allow an attorney, union official, or other individual to represent the employee;

- Give the employee a reasonable amount of time to answer orally and/or in writing; and
- Allow the employee to review all materials used for the proposed notice.

Notice of Proposed Demotion
Normally, first-level supervisors sign and issue proposed notices and second-level supervisors issue final decisions on performance-based actions. Supervisors should ask the employee to initial and date the notice. This information is needed both to reflect proof of receipt and because of case processing time limits. The original notice should be given to the employee, with copies retained by the supervisor and the human resources office for the file.

Notice of Decision to Demote
The final decision to demote must have the concurrence of a management official at a higher level than the person who proposed the action. Normally, first-level supervisors sign and issue the proposal to demote and second-level supervisors receive and consider any employee reply and issue the final written decision. Again, supervisors should ask the employee to initial and date receipt of the demotion decision notice, and then provide the original and copies of the notice as detailed above.

Removal
Supervisors must comply with the following when issuing a notice of proposed removal to an employee:

- Provide the employee with a 30-day advance written notice of the proposed action. The notice must identify unsuccessful critical job element(s) and specific instances of unacceptable performance on which the action is based. The unacceptable performance must have occurred during the one-year period that ends on the date of the proposed notice;
- Allow an attorney, union official, or other individual to represent the employee;
- Give the employee a reasonable amount of time to answer orally and/or in writing; and
- Allow the employee to review all materials used for the proposed notice.

Notice of Proposed Removal
As with demotion actions, first-level supervisors usually sign and issue proposed notices and second-level supervisors issue final decisions on performance-based actions. Supervisors should ensure that the employee initials and dates receipt of the notice, since this information is needed both to reflect proof of receipt and because of case processing time limits. Copies of the notice should be distributed as follows: the original to the employee, a copy for the supervisor, and a copy for the human resources office case file.

Notice of Decision to Remove
The final decision to remove must have the concurrence of a management official at a higher level than the person who proposed the action. Usually first-level supervisors sign and issue the proposal to remove and second-level supervisors receive and consider the employee's reply and issue the final written decision. Once again, supervisors should ensure that the employee initials and dates receipt of the notice, and copies are provided to the interested parties.

Within-Grade Increase (WGI)
A within-grade increase (WGI) is an increase in an employee's rate of basic pay by advancement from one step of his or her grade to the next after meeting the requirement for length of service and satisfactory performance. Personnel actions affecting WGIs are generated automatically by the

personnel or human resources office unless the supervisor identifies a performance problem with the employee, in which case it may be postponed or withheld.

The following are the waiting periods required to move from one step to the next for General Schedule and Federal Wage System employees.

Waiting Period for General Schedule (GS) (full-time):
* For advancement to steps 2, 3, and 4 - 52 calendar weeks
* For advancement to steps 5, 6, and 7 - 104 calendar weeks
* For advancement to steps 8, 9, and 10 - 156 calendar weeks

Waiting Period for Federal Wage System (WG/WS) (full-time):
* For advancement to step 2, 26 calendar weeks in step 1
* For advancement to step 3, 78 calendar weeks in step 2
* For advancement to steps 4 and 5, 104 calendar weeks in steps 3 and 4, respectively.

Postponing Within-Grade Increase
An employee's within-grade increase (WGI) must be postponed when either of the following conditions exists:

- The employee was not given a performance plan or specific requirements for fully successful performance at least 90-calendar days before the end of the waiting period; or
- The employee has been reassigned or demoted because of unacceptable performance and is or will be eligible for a WGI in less than 90 days.

If either of the above two conditions exist, the supervisor should notify the employee in writing of the postponement, the reason for it, and that he or she has no more than 90 calendar days to demonstrate fully successful performance. The supervisor must give the employee a new or revised performance plan that establishes the performance job elements and standards that must be met during the 90-day period. The supervisor should also contact the personnel of human resources office for guidance. If the employee's performance remains unacceptable, action must be taken to withhold the WGI.

Withholding Within-Grade Increase
There are three situations under which a within-grade increase (WGI) is withheld:

- Rating of record is "Fully Successful" and performance has deteriorated to less than "Fully Successful";
- Rating of record is less than "Fully Successful"; or
- Employee failed to demonstrate fully successful performance during the 90-day postponement period.

Initial Decision to Withhold Within-Grade Increase
Normally, first-level supervisors/rating officials are authorized to sign and issue the initial notice of decision and make a recommendation to a higher lever management official on final decisions to withhold within-grade increases. Supervisors should ensure that the employee initials and dates receipt of the notice. This information is needed both to reflect proof of receipt and because of case processing time limits. Copies of the notice should be distributed as follows: the original to the employee, a copy for the supervisor, and a copy for the personnel or human resources office case file.

Initial Probationary or Trial Period

Employees in the competitive service must serve a probationary period during the first year of their first permanent federal appointment to determine fitness for continued employment. This probation is an extension and continuation of the merit systems competitive examination process required for initial entry into federal service. After completion of the one-year probationary period, an employee is entitled to exercise appeal rights to the Merit Systems Protection Board (MSPB). If an employee is terminated during his or her probationary period, the supervisor is only obliged to notify the employee in writing and state the reasons for the termination. Probationers generally may not appeal such decisions to the MSPB.

During the probationary period, the supervisor will evaluate the employee's job performance and work behavior, as well as his or her character, conduct, and attitude that directly affect job performance. Prior to the end of the one-year probationary period, the supervisor must review the probationer's performance and assess suitability for continued federal service. If the individual's performance is inadequate, and termination is considered the proper course of action, this is the time to act.

If an employee fails to successfully complete the probationary period, several options are available. In lieu of separation, the employee could be demoted or reassigned. Supervisors should discuss the proper action with their servicing personnel specialist.

Supervisory or Managerial Probationary Period

An employee in the competitive service must serve a probationary period before initial assignment as either a supervisor or manager becomes final. Length of the probationary period is normally one year.

After selection, the employee is notified of the requirement to successfully complete a probationary period. Second-level supervisors and managers are required to provide guidance and training on supervisory and managerial skills and techniques to subordinate supervisors who are on probation. If an employee does not satisfactorily complete probation, he or she has a right to be returned to a nonsupervisory or nonmanagerial position of no lower grade and pay than the previous nonsupervisory position held.

Medical Examinations

The authority to order medical examinations is quite limited. An individual who occupies a position which has medical standards or physical requirements may be required to undergo a medical examination whenever there is a direct question about his or her continued capacity to meet the physical or medical requirements of the position. Such an examination may be ordered for instances of job-related injuries/illnesses and for those that are not job-related.

If an employee occupying a position that has medical standards or physical requirements has a medical condition that appears to impair his or her capabilities to safely and effectively complete work assignments, and a medical examination supports this conclusion, options may include:

- Placing the employee in another position that accommodates his or her medical condition or limitations; or
- Accommodating the employee in his or her current position by temporarily or permanently modifying work assignments and/or work environment.

If accommodation is not feasible, it may be necessary to take action to remove the employee under adverse action procedures based upon medical inability to perform the duties of his or her assigned position.

A medical examination may be offered (including a psychiatric examination) in any situation where management needs additional medical information to make an informed judgment. This could involve a requested employee benefit (e.g., change in hours or duty assignment) or because a performance or conduct problem may require management action. Management must pay for all medical examinations that are ordered or offered by management.

Discipline and Adverse Actions

If an employee has done something or failed to do something that adversely affects his or her work, the ability of others to do their work, or the agency mission, management is faced with decisions on how to handle the incident or series of incidents. First, the supervisor must decide whether the incident involves poor job performance or an act of misconduct or delinquency. Normally, it is one or the other, but in some cases, it could be both. Next, management must decide what type of action will deal most effectively with the situation.

There are many possible causes for an employee's performance and/or conduct problem. For example, illness, disability, drug or alcohol abuse, personality conflict, family problems, lack of training, and low job morale could all be possible causes. The nature of the problem will determine the course of action to be taken. If an employee is suspected of substance abuse, for example, a referral to the Employee Assistance Program (EAP) would be appropriate.

If the problem is failure to meet the elements and standards established on the employee's performance plan, then the supervisor should consider placing the employee on a Performance Improvement Period, as described above.

If the issue is misconduct or delinquency, such as tardiness, failure to properly request leave, insubordination, or theft, then an option could be to take disciplinary action. There are a variety of ways to deal with misconduct. Depending on the severity of the employee's misconduct, appropriate action can range from admonishments and reprimands to suspensions and removals.

There may be instances where the problems are both performance and conduct. In these cases, action could be taken under either program. Normally, performance problems would be dealt with using 5 CFR 432 procedures and 5 CFR 752 procedures would be used for conduct problems. However, where management wished to take action concerning both problems, 5 CFR 752 procedures would be used.

Minor Disciplinary Measures

Management may take any of several actions intended to make an employee conscious of inappropriate work habits, work methods or behavior, and to ensure acceptable performance in the future. These measures may be a prelude to taking more serious disciplinary action if the objectionable actions are repeated. Minor disciplinary actions include an oral admonishment, an oral warning, or an oral reprimand. These are informal measures intended to make an employee aware that his or her behavior is problematic and must change.

Letter of Reprimand

A letter of reprimand is the least serious formal disciplinary action that may be taken against an employee. A letter of reprimand is typically maintained in the employee's Official Personnel Folder for two years, during which time it may serve as a basis for justifying more severe disciplinary action should a further infraction of the same type occur. It is one step up in severity from an oral admonishment, an oral warning, or an oral reprimand. A letter of reprimand may follow a minor disciplinary measure (such as a letter of caution) or may be issued instead of a minor disciplinary measure because of the significance of the infraction.

Letters of reprimand are not addressed in statute or regulation. Their content and format may vary. Supervisors should consult their servicing personnel office for specific guidance in the preparation and use of letters of reprimand.

Disciplinary Actions

Maintaining discipline usually is not a problem within a work environment where reasonable rules and standards of conduct and performance are clearly communicated and consistently and equitably enforced. Situations may arise in any work environment, however, where disciplinary action is necessary. In these instances, management's options, in order of least severe to most severe, include:

- Oral admonishment
- Letter of Reprimand
- Suspension from duties without pay
- Demotion
- Removal

Constructive discipline is preventative in nature, taken only when necessary, and then, promptly and equitably. Its objectives are to develop, correct and rehabilitate employees, and encourage their acceptance of appropriate standards of conduct. Penalties must be reasonable and applied as consistently as possible, considering the particular circumstances of the cause(s) for disciplinary action.

Burden of Proof

In disciplining employees, management bears the responsibility of proving the appropriateness of its actions, if challenged. Significant disciplinary actions (e.g., suspensions of more than 14 days, demotions, and removals) may be appealed to the Merit Systems Protection Board (MSPB). In an appeal to MSPB, management must be prepared to demonstrate by a preponderance of the evidence that the misconduct or other wrongdoing occurred, that there is a rational connection between the misconduct or other cause of action and the "efficiency of the service," and that the penalty selected did not clearly exceed the limits of reasonableness. One tool that supervisors use in determining a reasonable penalty for misconduct is called the "Douglas factors."

The Douglas Factors

The determination of which penalty to impose in a particular situation requires the application of responsible judgment on the part of management. Disciplinary action must be based on the conclusion that there is sufficient evidence available to support the misconduct charge(s) and that the disciplinary action is warranted and reasonable in light of all the circumstances.

In determining an appropriate remedy, management should observe the principle of "like penalties for like offenses in like circumstances." This means that penalties will be applied as consistently as

possible. Management must establish that the penalty selected does not clearly exceed the limits of reasonableness. A well-known MSPB case called Douglas v. Veterans Administration (5 MSPB 313 (1981)) addressed this issue in detail. A number of factors that management must weigh in deciding an appropriate course of action are discussed in this case. These factors are often referred to as the "Douglas factors." Some factors may not be applicable to a given case; relevant factors must be considered. Bear in mind, however, that certain offenses (e. g., drug trafficking) warrant mandatory penalties. In short, management officials must take into account the Douglas factors, outlined below, in choosing a penalty for misconduct. Managers issuing an adverse action decision notice should always cite the fact that the relevant Douglas factors were weighed in reaching the decision, in the event the case ends up on review before the MSPB.

The twelve Douglas factors are as follows:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
3. The employee's past disciplinary record.
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties.
6. The consistency of the penalty with those imposed upon other employees for the same offense in like or similar circumstances.
7. The consistency of the penalty with agency guidance on disciplinary actions.
8. The notoriety of the offense or its impact upon the reputation of the agency.
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.
10. The potential for the employee's rehabilitation.
11. The mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment or bad faith, malice or provocation on the part of others involved in the matter.
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Suspension

A suspension is an action that places an employee, for disciplinary reasons, in a temporary status without duties and pay. A suspension, regardless of duration, is an adverse action and considered a severe disciplinary action. Ordinarily, it is the final step in the disciplinary process before removal action and is accompanied by a warning to the employee that a further violation of rules could result in removal.

A suspension prevents an employee from performing work and denies salary for the suspension period. Therefore, a suspension is not normally imposed for indebtedness or for performance-related factors in nondisciplinary situations.

The period of suspension is normally expressed in calendar days. The statutory rights of employees depend on the duration of the suspension. Employees suspended for more than 14 days have the right

to at least 30 days advance written notice of the proposed action, a reasonable amount of time (not less than 7 days) to reply, representation, a reasonable amount of official time to review the material relied on to support the action, and a written decision. Employees are entitled to appeal the decision to the Merit Systems Protection Board (MSPB). Bargaining unit employees generally have the option of grieving the decision in accordance with the provisions of the applicable negotiated grievance procedure.

Employees suspended for 14 days or less have the right to (1) an advance notice of the proposed action, (2) a reasonable amount of time to reply, (3) representation, and (4) a written agency decision. Unrepresented employees may grieve the decision under the administrative grievance procedure. Bargaining unit employees generally must grieve using the negotiated grievance procedure. Supervisors should consult their labor and employee relations staff when considering a suspension, regardless of duration.

A proposed suspension may be mitigated to a shorter suspension, a lesser penalty (e.g., letter of reprimand), or to no penalty, after taking into consideration the employee's answer, the totality of the evidence, the potential for the employee's rehabilitation, and other factors. The decision letter typically references the original disciplinary action proposed and then indicates the action has been mitigated to a lesser or no penalty and the reason for the decision to mitigate. However, the deciding official may determine that the proposed penalty should not be mitigated at all. In that case, the decision letter would state that the proposed suspension is, in fact, being imposed on the employee. Remember that if the decision letter imposes any penalty, it must advise the employee of his or her right to challenge that decision and the procedure to follow.

Suspension for 14 Days or Less
An employee against whom a suspension for 14 days or less is proposed is entitled to:

- An advance written notice stating the specific reason for the proposed action.
- A reasonable amount of time to answer orally or in writing or both and to furnish affidavits and other documentary evidence in support of the answer. Users must follow any local regulation or collective bargaining agreement that may be applicable.
- Representation by an attorney or other representative and the right to review the evidence used to take the action.
- A written decision and the specific reason(s) for the decision at the earliest practicable date and before the effective date of the action. The decision letter must provide any grievance rights that are applicable.

Suspension for More Than 14 Days
An employee against whom a suspension for more than 14 days is proposed is entitled to:

- At least 30 days advance written notice.
- A reasonable amount of time, but not less than 7 days, to answer orally or in writing or both and to furnish affidavits and other documentary evidence in support of the answer.
- Representation by an attorney or other personal representative.
- A reasonable amount of official time to review the material relied on to support the proposed action, to prepare an answer, and to secure affidavits, if the employee requests time and is otherwise in an active duty status. However, if the employee is covered by a negotiated agreement (union contract), the provisions of that agreement must be followed.
- A written decision and the specific reason(s) for the decision at the earliest practicable date and before the effective date of the action.

Reduction in Grade and/or Pay (Demotion for Cause)
The usual range of penalties in response to an employee's misconduct or delinquency are: oral admonishment, letter of reprimand, suspension, and removal. However, before a decision is made to remove, another disciplinary option may be a more appropriate response to an employee's misconduct - reducing him or her in grade and/or pay.

The employee may be demoted either by redesigning his or her current position to a lower grade by deleting higher graded duties or responsibilities, or by moving him or her to a different, lower- graded position. The change to a lower grade may be within the employee's current work area or it may be to another position elsewhere in the organization. The position must be available, the employee must be qualified for it, and the gaining supervisor must be willing to accept the employee knowing the reasons for the placement action.

There is precedent in case law for taking action that results in both a downgrade and a suspension. Management should consult a servicing personnel specialist, however, prior to initiating such an action.

Removal
Removal is the involuntary separation of an employee from employment. It terminates the employee's status as a Federal employee. Removal is the most severe sanction that the Government may impose.

Before removal is initiated, the facts and circumstances in the case must be carefully reviewed to ensure they support the conclusion that the employee has demonstrated an unwillingness or refusal to conform to the rules of conduct or has breached the employee-employer relationship. It also must be found that rehabilitation is not appropriate and removal is appropriate for the offense(s). A removal for misconduct may be based upon the employee's actions on or off the job. If the misconduct is off the job, however, there must be a clear connection between the misconduct and the individual's employment.

Normally, disciplinary actions are progressive. If efforts to rehabilitate an employee have failed, removal may be considered. Removal for misconduct is preceded by progressively more severe actions unless the misconduct is so serious or the violation of rules and regulations so flagrant that discharge for a first or second offense is clearly warranted.

An employee against whom removal is proposed is entitled to:

- At least 30 days advance written notice.
- A reasonable amount of time, but not less than 7 days, to answer orally or in writing or both and to furnish affidavits and other documentary evidence in support of the answer.
- Representation by an attorney or other representative.
- A reasonable amount of official time to review the material relied on to support the proposed action, to prepare an answer and to secure affidavits, if the employee requests time and is otherwise in an active duty status.
- If the employee is covered by a negotiated agreement and that agreement contains adverse action procedures, the provisions of that agreement must be followed.
- A written decision and the specific reason(s) for the decision at the earliest practicable date, but before the effective date of the action.

Nondisciplinary Adverse Actions

A nondisciplinary adverse action is an adverse action taken for reason(s) other than to correct an employee's delinquency or misconduct. Such actions are initiated and decided using the same basic procedures followed for removals. Nondisciplinary adverse actions can have many causes, including: an agency's lack of funds; change to lower grade based upon classification determination; and physical or mental inability to perform the duties of a position.

The following are the primary nondisciplinary adverse actions:

- Furlough for 30 days or less.
- Change to lower grade due to reclassification.
- Removal for loss of security clearance (when a clearance is required to perform assigned duties).
- Removal for inability to perform the essential elements of the position.

Unlike standard adverse actions, other options may be available to employees faced with nondisciplinary adverse actions. For example, an employee may be entitled to notice of eligibility to apply for discontinued service retirement or disability retirement.

Furlough for 30 Days or Less

Furlough is a nondisciplinary action placing an employee in a temporary non-duty and non-pay status because of a lack of work or funds or for some other nondisciplinary reason. A furlough is an adverse action if it is for 30 calendar days or less. A furlough for more than 30 days is accomplished using Reduction-in-Force (RIF) procedures.

An employee for whom a furlough of 30 days or less is proposed is entitled to:

- At least 30 days advance written notice.
- A reasonable amount of time, but not less than 7 days, to answer orally, in writing, or both and to furnish affidavits and other documentary evidence in support of the answer.
- Representation by an attorney or other representative.
- A reasonable amount of official time to review the material relied on to support the proposed action, to prepare an answer, and to secure affidavits, if the employee requests time and is otherwise in an active duty status. However, if the employee is covered by a negotiated agreement, the provisions of that agreement must be followed.
- A written decision and the specific reason(s) for the decision at the earliest practicable date but before the effective date of the action.

Furloughs are sometimes prompted by unexpected events. Furloughs of this type are called "emergency furloughs." An emergency furlough is a furlough necessitated by conditions beyond an agency's control such as a sudden breakdown of equipment, acts of God, or failure by Congress to appropriate funds. Under such circumstances, it is not possible to provide the procedural entitlements shown above. In an emergency furlough, it is preferable but not required that employees receive advance written notice or an opportunity to respond prior to initiating the furlough. Although employees must ultimately receive such written notice, employees may be notified of the furlough by any reasonable means, including oral notification (in person or by telephone).

Change to Lower Grade

As positions are reviewed by local or higher level personnel management authorities, there may be times when a position is downgraded because of a determination that the position warrants

classification at a lower grade due to a classification error, a change to job grading standards, or erosion of duties.

Effecting such a downgrade (demotion) or change to lower grade of the employee occupying the position is considered an adverse action. It not only lowers the grade of the position but also may lower the employee's salary rate. Employees do not have entitlement to grade retention if the position has not been classified at the original grade for at least one year. In addition, employees are not entitled to grade retention unless they have served for at least 52 consecutive weeks in the affected position, or equivalent position, prior to the reclassification.

Depending upon circumstances, a change to lower grade may be effected under adverse action procedures or under reduction in force procedures. Supervisors should seek the advice of their servicing personnel specialist in deciding which procedures are applicable.

Hours of Duty, Work Schedules, and Compensation

Supervisors are responsible for establishing the hours of duty and work schedules for their employees. Some schedules and hours of duty provide the employee(s) with special pay entitlements. Employees also receive additional pay for overtime work and work on holidays.

Scheduling of Work

A work schedule has a direct effect on an employee's pay entitlements. "Regularly scheduled work" means work that is scheduled before the beginning of the administrative workweek. Because the term "regularly scheduled work" is significant in the determining premium pay entitlements, work schedules must reflect the employee's actual work requirements, including any period of regularly scheduled overtime.

Work Schedules

There are a number of different work schedules. Employees on different work schedules have varying benefits and entitlements, for example, leave accrual, health and life insurance coverage, paid holidays, etc.

Supervisors establish employee work schedules based on such factors as:

- Work requirements for the position and the agency
- The work requirements of other positions in the agency
- Higher management level requirements
- Availability/limitation of funds
- Availability and retention of candidates.

The SF 52, Request for Personnel Action, is used to request a change in work schedule. There may be advance notice period requirements before changes can be effected.

Work Schedule Options:

Full-Time - A full-time work schedule requires most employees to work 40 hours during the workweek.

Part-Time - A schedule that requires an employee to work less than full-time, but for a specific number of hours (usually 16-32 hours per administrative workweek) on a prearranged scheduled tour of duty.

Job Sharing - When two employees voluntarily share the duties and responsibilities of a full-time position. Job sharers are part-time employees and are subject to the same personnel policies on that basis. It is a way for management to offer part-time work schedules in positions where full-time coverage is needed.

Intermittent - A work schedule that requires an employee to work on an irregular basis for which there is no prearranged scheduled tour of duty.

On-Call - An employee who works when needed during periods of heavy workload with expected cumulative service of at least 6 months in pay status each year.

Seasonal - An employee who works on an annually recurring basis for periods of less than 12 months (2080 hours) each year. Snow removal workers and grounds maintenance crews are examples of seasonal employees.

Alternative Work Schedules
Alternative Work Schedules (AWS) have the potential to enable managers and supervisors to meet their program goals, while at the same time allowing employees to be more flexible in scheduling their work. As employees gain greater control over their time, they can, for example, balance work and family responsibilities more easily, become involved in volunteer activities, and take advantage of educational opportunities. AWS programs also serve as useful recruitment and retention tools. Subject to the obligation to negotiate with the local union(s), the decision to establish an AWS program is at the discretion of the agency.

There has been recent growing interest in AWS due to its potential for improving productivity, relieving traffic congestion, expanding the hours of service to the public, and providing greater employment opportunities for those who cannot work standard fixed hours. Results from many Federal agencies that have introduced AWS show increased productivity and employee morale, a virtual elimination of tardiness, and other favorable impacts. Many concerns can generally be minimized by careful planning and good communication of the objectives and ground rules of the program.

There are two categories of AWS:
- Flexible Work Schedules
- Compressed Work Schedules

Flexible Work Schedules
The basic flexible work schedule concept is a simple one. A flexible schedule splits the workday into two types of time: core time and flexible time. During core time all employees must be at work. Additional periods of flexible time are established during which the employee has the option of selecting and varying his or her starting and quitting time within limits set by management for the organization or installation.

The two requirements of any flexible work schedule program are: (1) each employee must be present during core time; and (2) the employee must work the number of hours for which he or she has contracted, for example, a 40-hour week in the case of a full-time employee, or a lesser number of hours for a part-time employee. Beyond these minimal requirements, the precise working hours can be established in whatever way is consistent with accomplishment of the organization's operational needs, the wishes of the employee, and any legal or regulatory restrictions.

Five types of flexible work schedules are:
1. Flexitour Schedule
2. Gliding Schedule
3. Variable Day Schedule
4. Variable Week Schedule
5. Maxiflex Schedule

Supervisors should be cautioned that a flexible work schedule is not simply a rearrangement of work hours, but a step away from a rigidly controlled work environment. Flexible schedules place more responsibility on both the supervisor and the employees and require a greater measure of trust and confidence between the parties.

Regulatory guidance is available on how to deal with overtime and other premium pay provisions, compensatory time off, leave, excused absence, holidays, temporary duty, and travel when flexible work schedules are established.

Compressed Work Schedules
Compressed work schedules have a basic work requirement of 80 hours in a biweekly pay period for a full-time employee. For a part-time employee, the basic work requirement is less than 80 hours that may be scheduled for less than 10 workdays.

The tour of duty is defined by the particular schedule the agency chooses to establish. For all compressed work schedules, the tour of duty is arranged in such a way that employees on these schedules will fulfill their basic work requirements in less than 10 days during the biweekly pay period. Compressed work schedules are always fixed schedules.

Three types of compressed work schedules are:
1. Four-day Workweek
2. Three-day Workweek
3. 5-4/9 Plan

Again, supervisors should be cautioned that compressed work schedules place more responsibility on both the supervisor and the employees and requires a greater measure of trust and confidence between parties. Regulatory guidance is available on how to deal with overtime and other premium pay provisions, compensatory time off, leave, excused absence, holidays, temporary duty, and travel when compressed schedules are established.

5

Transfers and Reinstatements

Transfers

A career or career-conditional employee of one agency may transfer, without a break in service of a single workday, to a competitive service position in another agency without competing in a civil service examination open to the public. A transfer eligible may apply under vacancy announcements open to status candidates. An employee may transfer to a position at the same, higher, or lower grade level.

Eligibility to Transfer
Present Federal employees who are serving in the competitive service under a career or career-conditional appointment are eligible to transfer to a position in the competitive service.

To transfer, you must meet the qualification requirements for the position. Written tests are not common, but if one is required, arrangements will be made for you to take it.

Employees must be found suitable for employment in competitive service positions. If your current appointment is subject to a suitability investigation, that condition continues after you transfer. Generally on transfer, a career employee remains a career employee, and a career-conditional employee remains a career-conditional employee.

Applying for Transfer
You must conduct your own job search. Transfer eligibility does not guarantee you a job offer. Hiring agencies have the discretion to determine the sources of applicants they will consider.
Individuals usually apply to agencies in response to vacancies announced under the merit promotion program. Some agencies accept applications only when they have an appropriate open merit promotion announcement, while others accept applications at any time. If you are seeking a higher grade or a position with more promotion potential than you have previously held, generally you must apply under a merit promotion announcement and rank among the best-qualified applicants to be selected. Status applicants include individuals who are eligible for transfer.

Probationary Period
An employee is not required by the civil service rules and regulations to serve a new probationary period after transfer. However, the employee continues to serve the remainder of any probationary period that he or she was serving at the time of transfer. In most cases, an employee must wait at least three months after his or her latest non-temporary competitive appointment before being considered for transfer to a position in a different line of work, at a higher grade, or to a different geographical area. OPM may waive the restriction against movement to a different geographical area when it is satisfied that the waiver is consistent with the principles of open competition.

Positions Restricted to Veterans
Some positions in the competitive service such as guard, messenger, elevator operator, and custodian have been restricted by law to persons entitled to preference under the veteran preference laws. Generally, a nonveteran employee cannot be transferred to such positions if there are veterans available

for appointment to them. This restriction does not apply to the filling of such positions by the transfer of a nonveteran already serving in a federal agency in a position covered by the same generic title. For example, a nonveteran who is serving in the position of guard may be considered for transfer to the position of patrolman, guard, fireman, guard-laborer, etc.

Reinstatement

If you have prior career or career-conditional service with the federal government, you may be eligible for reinstatement. Reinstatement allows you to reenter the Federal competitive service workforce without competing with the public in a civil service examination. You may apply for any open civil service examination, but reinstatement eligibility also enables you to apply for Federal jobs open only to status candidates.

Eligibility Requirements

You must have held a career or career-conditional appointment at some time in the past. If so, there is no time limit on reinstatement eligibility for those who have veterans' preference, or acquired career tenure by completing 3 years of substantially continuous creditable service.

If you do not have veterans' preference or did not acquire career tenure, you may be reinstated within 3 years after the date of your separation. Reinstatement eligibility may be extended by certain activities that occur during the 3-year period after separation from your last career or career- conditional appointment. Examples of these activities are:

- Federal employment under temporary, term, or similar appointments.
- Federal employment in excepted, non-appropriated fund, or Senior Executive Service positions.
- Federal employment in the legislative and judicial branches.
- Active military duty terminated under honorable conditions.
- Service with the District of Columbia Government prior to January 1, 1980 (and other service for certain employees converted to the District's independent merit system).
- Certain government employment or full-time training that provided valuable training and experience for the job to be filled.
- Periods of overseas residence of a dependent who followed a Federal military or civilian employee to an overseas post of duty.

Applying for Reinstatement

You must conduct your own job search. Reinstatement eligibility does not guarantee you a job offer. Hiring agencies have the discretion to determine the sources of applicants they will consider. Individuals usually apply to agencies in response to vacancies announced under the merit promotion program. Some agencies accept applications only when they have an appropriate open merit promotion announcement, while others accept applications at any time. If you are seeking a higher grade or a position with more promotion potential than you previously held, generally you must apply under a merit promotion announcement and rank among the best- qualified applicants to be selected. Status applicants include individuals who are eligible for reinstatement.

To establish your reinstatement eligibility, you must provide a copy of your most recent SF 50, Notification of Personnel Action, showing tenure group 1 or 2, along with your application. You may obtain a copy of your personnel records from your former agency if you recently separated. Otherwise, send your request to the Federal Records Center.

The Federal Records Center has been established as a depository for official personnel folders of persons no longer in the Federal service. Federal agencies, generally, transfer employment records to the Federal Records Center thirty days after the employee has been separated from Federal service. Requests for this information should be directed to:

Federal Records Center
National Archives and Records Administration
111 Winnebago Street
St. Louis, Missouri 63118
Phone: (314) 538-5761

Such inquiries should include your full name under which you were formerly employed, social security number, date of birth, and to the extent known, former Federal employing agencies, addresses and dates of such employment. The Privacy Act of 1974 (5 USC 552a) and OPM require a signed and dated written request for information from Federal records. No requests for information from personnel or any other type of records will be accepted by telephone or e-mail.

Citizenship
You must be a citizen of the United States.

Qualifications
You must meet the qualification requirements for the position. Written tests are not common, but if one is required, arrangements will be made for you to take it.

Suitability
You must meet the suitability standards for Federal employment. If you were removed for cause from your previous Federal employment, it will not necessarily bar you from further Federal service. The facts in each case as developed by inquiry or investigation will determine the person's fitness for re-entry into the competitive service.

Age
There are no maximum age limits for appointment to most positions in the competitive service. Some jobs, such as law enforcement officers and firefighters, do have limits.

Positions Restricted to Veterans
Positions in the competitive service such as guard, messenger, elevator operator, and custodian have been restricted by law to veterans entitled to preference. Generally, a non-veteran may not be reinstated to such positions if qualified veterans are available.

Probationary Period
A former employee who did not complete a required probationary period during previous service under the appointment upon which his or her eligibility for reinstatement is based is required, in most cases, to serve a complete one-year probationary period after reinstatement.

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Senior Executive Service

The Senior Executive Service (SES) is a corps of men and women who administer public programs at the top levels of Federal Government. Positions are primarily managerial and supervisory. The SES is a gradeless system in which salary is linked to individual performance, not position. For 2003, basic annual salaries range from $116,500 to $134,000. Employees in most geographic locations also receive locality pay, with total pay ranging from $127,707 to $142,500. Some positions include additional recruitment incentives, which are described below.

Established by the Civil Service Reform Act (CSRA) of 1978, the SES became effective in July 1979. In creating the SES, CSRA established a unique executive corps, with the same executive qualification requirements for all members. It provided for one distinct personnel system for senior executive positions designed to provide greater agency flexibility for selecting and developing their executives, within a governmentwide framework that preserves the larger corporate interests of government. It also shifted to a rank-in-person concept to facilitate executive mobility.

The SES covers managerial, supervisory, and policy positions above grade 15 that are not filled by Presidential appointment with Senate confirmation. Some agencies and agency components are excluded by law, such as independent government corporations and the intelligence agencies. Also, some positions are excluded by law, such as the Foreign Service and Administrative Law Judges. There are other non-SES systems that govern non-executive positions above GS-15 - those for which technical expertise, not leadership, is paramount (e.g., Senior Level, Scientific/Professional systems).

Structure of the SES

There are two types of SES positions - General and Career Reserved. A General position may be filled by a career, noncareer, or limited appointee. The same General position may be filled by a career appointee at one time and by a noncareer or limited appointee at another time. However, a Career Reserved position must always be filled by a career appointee. (Note that there are no "noncareer or career positions" in the SES.) By law, there is a governmentwide minimum number of positions that must be career reserved.

Criteria for Career Reserved Positions

A position is designated Career Reserved if it must be filled by a career appointee to ensure the impartiality, or the public's confidence in the impartiality, of the Government. Career Reserved positions are those that involve day-to-day operations, without responsibility for or substantial involvement in the determination or public advocacy of the major policies of the Administration or agency. They include positions in these occupational disciplines: adjudication and appeals; audit and inspection; civil or criminal law enforcement and compliance; contract administration and procurement; grants administration; investigation and security matters; and tax liability, including the assessment or collection of taxes and the preparation or review of interpretative opinions. They also include:

- scientific or other highly technical or professional positions where the duties and responsibilities of the position are such that it must be filled by a career appointee to ensure impartiality;

- other positions requiring impartiality, or the public's confidence in impartiality, as determined by the agency in light of its mission; and
- positions that the law specifically requires be Career Reserved or be filled by a career appointee.

SES Appointments

In addition, there are four types of SES appointments - career, noncareer, limited term, and limited emergency. The characteristics of each of the types are as follows:

- Career: Competitive selection requirements and entitlements; no time limit.
- Noncareer: No competitive selection requirements; no entitlements; no time limit.
- Limited Term: Non-renewable appointment for up to 3 years for time-limited, project-type work.
- Limited Emergency: Non-renewable appointment for up to 18 months to meet a bona-fide, unanticipated, urgent need.

How SES Jobs Are Filled

Each Federal agency determines the qualifications required for its SES positions, and whether to consider only current Federal civil service appointees or all qualified candidates. There are two methods of entry into the SES: (1) apply directly to a Federal agency for a specific SES position, or (2) apply directly for a Federal Agency's SES Candidate Development Program (SESCDP).

Qualifications Review Board (QRB) certified graduates of an SESCDP advertised to "all qualified Civil Service appointees" or "all qualified persons" are eligible for (but not guaranteed) career appointment to an SES position without further competition.

Qualifications Requirements

An applicant must meet two types of qualifications for any SES position: the Executive Core Qualifications, which apply to every SES position; and specific, professional/technical qualifications (if any) for the position being advertised.

OPM has identified five Executive Core Qualifications (ECQs) common to all SES positions. The ECQs are (1) Leading Change; (2) Leading People; (3) Results Driven; (4) Business Acumen; and (5) Building Coalitions/Communication.

The ECQs are mandatory qualification standards for every SES position. Agencies may also identify specific, professional/technical qualifications for the position being filled. The qualification standards for an advertised SES position are listed in the agency's vacancy announcement. Applicants need to obtain a copy of the agency's vacancy announcement to respond to these requirements.

Examination Process

A Federal agency:

- reviews, rates, and ranks applicants based on the executive and professional/technical qualifications, if any, listed in the vacancy announcement;
- makes a final selection from among the best-qualified applicants; and
- submits a case to OPM for Qualifications Review Board (QRB) consideration of the selectee's Executive Core Qualifications.

OPM convenes a Qualifications Review Board (QRB) to evaluate the candidate's executive qualifications, and notifies the submitting agency of the QRB's decision.

Recruitment Area

Agencies decide how to fill a vacant SES position. If they choose to advertise the position (as opposed to noncompetitive alternatives), they also determine the recruitment area. There are two choices: "all qualified civil service appointees" or "all qualified persons."

Recruitment Incentives

Exceptional difficulty in recruiting highly qualified applicants for SES positions may result in:

- payment of recruitment or relocation bonuses up to 25 percent of base pay; or
- waiver of the dual compensation restrictions that apply to civil service retirees; or
- designation of the position for critical pay authority, which can provide for setting basic pay at rates as high as Executive Level I (currently $171,900)

Candidate Development Programs

Some, but not all, Federal agencies have SES Candidate Development Programs to identify and develop potential executive talent. QRB certified graduates of OPM-approved SESCDPs advertised to "all qualified civil service appointees" or "all qualified persons" are eligible for a career appointment to the SES without further competition. However, graduates are not guaranteed an SES position.

SES Mobility Opportunities

OPM provides a web-based tool to match executives with opportunities called the SES Senior Opportunity and Resume System (SES SOARS) (https://sesmobility.opm.gov). Current SES members, QRB certified SESCDP graduates and individuals with SES reinstatement eligibility can use SES SOARS to post their resumes and to learn about opportunities in Federal agencies, including temporary vacancies, short-term projects, emergency needs and vacant permanent positions.

Federal Executive Institute and Management Development Centers

The Federal Executive Institute and the Management Development Centers, which are run by OPM, are dedicated to developing career leaders for the federal government. The three centers, in Charlottesville, Virginia, Shepherdstown, West Virginia, and Denver, Colorado, all offer residential learning environments and are staffed with program directors, seminar leaders, and facilitators drawn from America's elite corps of training professionals. Attendees are high performing supervisors, managers, and executives who come to the Centers for anywhere from a few days to four weeks to enhance their leadership and management skills. They may do so at any stage of their career from first line supervisor through the Senior Executive Service. In addition, OPM offers customized courses either at the three Centers or at the employee's location, as well as consulting services when help is needed in identifying and addressing organizational challenges.

7

Rights of Military Personnel

Veterans' Preference

The federal government has a long record of employing veterans. Veterans hold a far higher percentage of jobs in the government than they do in private industry. In large part, this is due to laws providing veterans' preference and special appointing authorities for veterans, as well as the fact that agencies recognize that hiring veterans is just good business. This chapter explains how the federal employment system works and how veterans' preference and the special appointing authorities operate within that system.

OPM administers entitlement to veterans' preference in employment under title 5, United States Code, and oversees other statutory employment requirements in titles 5 and 38. Both title 5 and title 38 use many of the same terms, but in different ways. For example, service during a "war" is used to determine entitlement to veterans' preference and service credit under title 5. OPM has always interpreted this to mean a war declared by Congress. But title 38 defines "period of war" to include many non-declared wars, including Korea, Vietnam, and the Persian Gulf. Such conflicts entitle a veteran to VA benefits under title 38, but not necessarily to preference or service credit under title 5.

Background of Veterans' Preference

Since the time of the Civil War, veterans of the Armed Forces have been given some degree of preference in appointments to federal jobs. Recognizing their sacrifice, Congress enacted laws to prevent veterans seeking Federal employment from being penalized for their time in military service. Veterans' preference recognizes the economic loss suffered by citizens who have served their country in uniform, restores veterans to a favorable competitive position for government employment, and acknowledges the larger obligation owed to disabled veterans.

Veterans' preference is not so much a reward for being in uniform as it is a way to help make up for the economic loss suffered by those who answered the nation's call to arms. Historically, preference has been reserved by Congress for those who were either disabled or who served in combat areas. Eligible veterans receive many advantages in federal employment, including preference for initial employment and a higher retention standing in the event of layoffs. However, the veterans' preference laws do not guarantee the veteran a job, nor do they give veterans preference in internal agency actions such as promotion, transfer, reassignment, and reinstatement.

Veterans' preference in its present form comes from the Veterans' Preference Act of 1944, as amended, and is now codified in various provisions of title 5, United States Code. By law, veterans who are disabled or who served on active duty in the Armed Forces during certain specified time periods or in military campaigns are entitled to preference over others in hiring from competitive lists of eligibles and also in retention during reductions in force.

Preference applies in hiring for virtually all jobs, whether in the competitive or excepted service. In addition to receiving preference in competitive appointments, veterans may be considered for special noncompetitive appointments for which only they are eligible.

Veterans Employment Opportunities Act of 1998

This law gives veterans access to federal job opportunities that might otherwise be closed to them. The law requires that:

- Agencies allow eligible veterans to compete for vacancies advertised under the agency's merit promotion procedures when the agency is seeking applications from individuals outside its own workforce.
- All merit promotion announcements open to applicants outside an agency's workforce include a statement that these eligible veterans may apply.

The law also establishes a new redress system for preference eligibles and makes it a prohibited personnel practice for an agency to knowingly take or fail to take a personnel action if that action or failure to act would violate a statutory or regulatory veterans' preference requirement.

How Federal Jobs Are Filled

There are essentially two classes of jobs with the federal government: 1) those that are in the competitive civil service, and 2) those that are in the excepted service. Competitive civil service jobs are under OPM's jurisdiction and subject to the civil service laws enacted by Congress in title 5, United States Code. These laws were enacted to ensure that jobs were filled based on a merit system for selecting the best qualified candidates according to job-related criteria. These laws, however, provide individual managers sufficient flexibility to appoint the person they believe is the best qualified for the job. Agencies may fill jobs from outside the civil service or from among candidates with civil service status. In filling jobs, some selections must be made competitively, while others may be made without open competition.

When filling a competitive service job from outside the civil service, agencies may:

- appoint a well-qualified candidate from a competitive list of eligibles developed by OPM or by an agency with delegated examining authority; or
- appoint someone who is eligible under one of a number of special appointing authorities (e.g., the VRA or Schedule B authorities discussed later on, and others authorized by either law or executive order).

Alternatively, in filling jobs from among "status" candidates, agencies may:

- appoint someone from an agency-developed merit promotion list (when these jobs are open to candidates outside the agency, the agency must allow eligibles under the Veterans Employment Opportunities Act of 1998, as amended, to apply); or
- reassign a current agency employee, transfer an employee from another agency, or reinstate a former federal employee.

Note: "Status" candidates are those who are eligible for noncompetitive movement within the competitive service because they either are now or were serving under career-type appointments in the competitive service.

An agency request for a list of eligible candidates or a job posting represents only a search for qualified candidates; there is no obligation on the part of the agency to make a selection. When a selection is made, agencies generally have broad authority under law to select from any number of sources of eligibles -- from outside the Federal service as well as from within.

Since 1996, agencies have been required by Presidential directive to give first consideration to surplus and displaced federal employees to soften the effects of widespread restructuring and downsizing aimed at making the government more efficient.

Excepted service jobs, as the name suggests, are excepted from most or all of the civil service laws for various reasons and are not generally subject to OPM's jurisdiction. Positions are excepted by law, by executive order, or by action of OPM placing a position or group of positions in excepted service Schedules A, B, or C. For example, certain entire agencies such as the Postal Service, the Federal Bureau of Investigation, and the Central Intelligence Agency are excepted by law. In other cases, certain jobs or classes of jobs in an agency are excepted by OPM. This includes attorneys, chaplains, student trainees, veterans appointed under the Veterans Employment Opportunities Act of 1998, and others.

Types Of Appointments

There are three ways veterans can be appointed to jobs in the competitive civil service: by competitive appointment through an OPM list of eligibles (or agency equivalent), by noncompetitive appointment under special authorities that provide for conversion to the competitive service, or by merit promotion selection under the Veterans Employment Opportunities Act (VEOA).

1. A competitive appointment is one in which the veteran competes with others on an OPM list of eligibles (or agency equivalent under delegated examining authority). This is the normal entry route into the civil service for most employees. Veterans' preference applies in this situation, and those veterans who qualify as preference eligibles -- i.e., who are entitled to veterans' preference -- have 5 or 10 extra points added to their passing score on a civil service examination. Before a job is filled by competitive appointment, the examining office must report it to OPM for announcing to the public; OPM also notifies State employment service offices. The examining office then determines the candidates' qualifications and rates and ranks them according to job-related criteria. This list of eligibles, or certificate, is then given to the selecting official.

2. A noncompetitive appointment under special authority is one such as the Veterans Recruitment Appointment (VRA) authority (formerly known as the Veterans' Readjustment Appointment (VRA) authority) and the special authority for 30 percent or more disabled veterans. Eligibility under these special authorities (which are explained below) gives veterans a very significant advantage over others seeking to enter the federal service in that they do not compete with them. An agency that wants to hire under one of these authorities can simply appoint the eligible veteran to any position for which the veteran is qualified. There is no red tape or special appointment procedures. However, use of these special authorities is discretionary with the agency. Veterans' preference applies when making appointments under these special authorities if there are two or more candidates and one or more is a preference eligible. These authorities provide for noncompetitive conversion to the competitive service after a suitable period of satisfactory service.

3. A Merit Promotion selection under the VEOA is one in which the veteran competes with current federal employees under an agency's merit (or internal) promotion procedures. The VEOA allows eligible veterans to apply under an agency merit promotion announcement open to candidates outside the agency. However, agencies do not apply veterans' preference when considering individuals under Merit Promotion procedures or under the VEOA. Use of this special authority, as with other authorities, is discretionary with the agency. A VEOA eligible who competes under merit promotion procedures and is selected will be given a career or career conditional appointment.

In order to maximize their opportunities, veterans who are eligible for both preference and noncompetitive appointment should, where possible, make sure they are being considered both competitively through an OPM exam or equivalent, and noncompetitively under special authority such as the VRA.

Who Is Entitled To Veterans' Preference In Employment

Five-point preference is given to those honorably separated veterans (this means an honorable or general discharge) who served on active duty (not active duty for training) in the Armed Forces:

- during any war (this means a war declared by Congress, the last of which was World War II);
- during the period from April 28, 1952 through July 1, 1955;
- for more than 180 consecutive days, any part of which occurred after January 31, 1955, and before October 15, 1976;
- during the Gulf War period beginning August 2, 1990, and ending January 2, 1992; or
- in a campaign or expedition for which a campaign medal has been authorized, such as El Salvador, Lebanon, Granada, Panama, Southwest Asia, Somalia, and Haiti.

Medal holders and Gulf War veterans who originally enlisted after September 7, 1980, or entered on active duty on or after October 14, 1982, without having previously completed 24 months of continuous active duty, must have served continuously for 24 months or the full period called or ordered to active duty.

Effective on October 1, 1980, military retirees at or above the rank of major or equivalent, are not entitled to preference unless they qualify as disabled veterans.

Ten-point preference is given to:

- those honorably separated veterans who 1) qualify as disabled veterans because they have served on active duty in the Armed Forces at any time and have a present service-connected disability or are receiving compensation, disability retirement benefits, or a pension from the military or the Department of Veterans Affairs; or 2) are Purple Heart recipients;
- the spouse of a veteran unable to work because of a service-connected disability;
- the unmarried widow of certain deceased veterans; and
- the mother of a veteran who died in service or who is permanently and totally disabled.

When applying for federal jobs, eligible veterans should claim preference on their application or resume. Applicants claiming 10-point preference must complete form SF-15, Application for 10-Point Veteran Preference. Veterans who are still in the service may be granted 5 points tentative preference on the basis of information contained in their applications, but they must produce a DD Form 214 prior to appointment to document entitlement to preference.

Note: Reservists who are retired from the Reserves but are not receiving retired pay are not considered "retired military" for purposes of veterans' preference.

The Department of Labor's Office of the Assistant Secretary for Policy and Veterans' Employment and Training Service developed an "expert system" to help veterans receive the preferences to which they are entitled. Two versions of this system are currently available, both of which help the veterans determine the type of preference to which they are entitled, the benefits associated with the preference and the steps necessary to file a complaint due to the failure of a federal agency to provide those

benefits. To find out whether you qualify for veterans' preference, visit America's Job Bank, operated by the Department of Labor (DOL).

How Preference Applies In Competitive Examination

Veterans who are eligible for preference and who meet the minimum qualification requirements of the position have 5 or 10 points added to their passing score on a civil service examination. For scientific and professional positions in grade GS-9 or higher, names of all eligibles are listed in order of ratings, augmented by veterans' preference points, if any. For all other positions, the names of 10-point preference eligibles who have a service-connected disability of 10 percent or more are placed ahead of the names of all other eligibles. Other eligibles are then listed in order of their earned ratings, augmented by veterans' preference points. A preference eligible is listed ahead of a nonpreference eligible with the same score.

The agency must select from the top 3 candidates (known as the Rule of 3) and may not pass over a preference eligible in favor of a lower ranking non-preference eligible without sound reasons that relate directly to the veteran's fitness for employment. The agency may, however, select a lower-ranking preference eligible over a compensably disabled veteran within the Rule of 3.

A preference eligible who is passed over on a list of eligibles is entitled, upon request, to a copy of the agency's reasons for the pass over and the examining office's response. If the preference eligible is a 30 percent or more disabled veteran, the agency must notify the veteran and OPM of the proposed pass over. The veteran has 15 days from the date of notification to respond to OPM. OPM then decides whether to approve the pass over based on all the facts available and notifies the agency and the veteran.

Entitlement to veterans' preference does not guarantee a job. There are many ways an agency can fill a vacancy other than by appointment from a list of eligibles.

Filing Applications After Examinations Close

A 10-point preference eligible may file an application at any time for any position for which a nontemporary appointment has been made in the preceding 3 years; for which a list of eligibles currently exists that is closed to new applications; or for which a list is about to be established. Veterans wishing to file after the closing date should contact the agency that announced the position for further information.

Special Appointing Authorities For Veterans

The following special authorities permit the noncompetitive appointment of eligible veterans. Use of these special authorities is entirely discretionary with the agency; no one is entitled to one of these special appointments:

The Veterans' Recruitment Appointment (VRA) - A new law, Public Law 107-288, the Jobs for Veterans Act ("Act"), enacted November 7, 2002, revised the eligibility requirements for a Veterans Readjustment Appointment (which the Act redesignated as a Veterans Recruitment Appointment – ["VRA"]). The new law took effect on the date of enactment. OPM is revising its regulations to reflect the changes made by the Act. Agencies are still permitted to make VRAs, but must comply with the provisions of the Act when doing so. To the extent that OPM's regulations are not in accord with the Act, the new Act governs. OPM advises those with questions to email eswebmaster@opm.gov for more specific guidance.

The VRA is a special authority by which agencies can appoint an eligible veteran without competition. The VRA is an excepted appointment to a position that is otherwise in the competitive service. After 2 years of satisfactory service, the veteran is converted to a career-conditional appointment in the competitive service. (Note, however, that a veteran may be given a noncompetitive temporary or term appointment based on VRA eligibility. These appointments do not lead to career jobs.)

When two or more VRA applicants are preference eligibles, the agency must apply veterans' preference as required by law. (While all VRA eligibles have served in the Armed Forces, they do not necessarily meet the eligibility requirements for veterans' preference under section 2108 of title 5, United States Code.)

Terms and conditions of employment: VRA eligibles may be appointed to any position for which qualified up to GS-11 or equivalent (the promotion potential of the position is not a factor). The veteran must meet the qualification requirements for the position. (Any military service is considered qualifying for GS-3 or equivalent.) After 2 years of substantial continuous service in a permanent position under a VRA, the appointment will be converted to a career or career conditional appointment in the competitive service, providing performance has been satisfactory. Once on-board, VRAs are treated like any other competitive service employee and may be promoted, reassigned, or transferred. VRA appointees with less than 15 years of education must complete a training program established by the agency.

How To Apply: Veterans should contact the federal agency personnel office where they are interested in working to find out about VRA opportunities.

30 Percent or More Disabled Veterans - These veterans may be given a temporary or term appointment (not limited to 60 days or less) to any position for which qualified (there is no grade limitation). After demonstrating satisfactory performance, the veteran may be converted at any time to a career-conditional appointment.

Terms and conditions of employment: Initially, the disabled veteran is given a temporary appointment with an expiration date in excess of 60 days. This appointment may be converted to at any time to a career conditional appointment. Unlike the VRA, there is no grade limitation.

How To Apply: Veterans should contact the federal agency personnel office where they are interested in working to find out about opportunities. Veterans must submit a copy of a letter dated within the last 12 months from the Department of Veterans Affairs or the Department of Defense certifying receipt of compensation for a service-connected disability of 30% or more.

Disabled Veterans Enrolled In VA Training Programs - Disabled veterans eligible for training under the Department of Veterans Affairs' (VA) vocational rehabilitation program may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. The veteran is not a federal employee for most purposes while enrolled in the program, but is a beneficiary of the VA.

The training is tailored to individual needs and goals so there is no set length. If the training is intended to prepare the individual for eventual appointment in the agency (rather than just work experience), OPM must approve the training plan. Upon successful completion, the veteran will be given a Certificate of Training showing the occupational series and grade level of the position for which

trained. This allows any agency to appoint the veteran noncompetitively for a period of 1 year. Upon appointment, the veteran is given a Special Tenure Appointment which is then converted to career-conditional with OPM approval.

Veterans Employment Opportunities Act (VEOA) - This authority permits an agency to appoint an eligible veteran who has applied under an agency merit promotion announcement that is open to candidates outside the agency.

Eligibility: To be eligible for a VEOA appointment, a candidate must be a preference eligible or veteran separated after substantially completing at least 3 years of continuous active duty service performed under honorable conditions.

Terms and conditions of employment: A veterans given a VEOA appointment will be given a career or career conditional appointment in the competitive service.

How to apply: Veterans interested in applying under this authority should seek out agency merit promotion announcements open to candidates outside the agency. Applications should be submitted directly to the agency. Please note that veterans who have career status or are reinstatement eligible are not eligible for VEOA appointments.

Positions Restricted To Preference Eligibles

Examinations for custodian, guard, elevator operator and messenger are open only to preference eligibles as long as such applicants are available.

Affirmative Action For Certain Veterans Under Title 38

Section 4214 of title 38, United States Code, calls upon agencies to establish a separate affirmative action program for disabled veterans as part of agency efforts to hire, place, and advance persons with disabilities under the Rehabilitation Act of 1973. Agencies are also urged to "promote the maximum of employment and job advancement opportunities" for those veterans eligible for noncompetitive appointment under the above special authorities.

This section requires agencies to:

- provide placement consideration under special noncompetitive hiring authorities for VRA and 30 percent or more disabled veterans;
- ensure that all veterans are considered for employment and advancement under merit system rules; and
- establish an affirmative action plan for the hiring, placement, and advancement of disabled veterans.

Veterans' Complaints

Veterans who believe that they have not been properly accorded their rights have several different avenues of complaint, depending upon the nature of the complaint and the individual's veteran status:

The Veterans Employment Opportunities Act of 1998 allows preference eligibles to complain to the Department of Labor's Veterans' Employment and Training Service (VETS) when the person believes an agency has violated his or her rights under any statute or regulation relating to veterans' preference.

Under a separate Memorandum of Understanding (MOU) between OPM and the Department of Labor, eligible veterans seeking employment who believe that an agency has not properly accorded them their veterans' preference, failed to list jobs with State employment service offices as required by law, or failed to provide special placement consideration noted above, may file a complaint with the local Department of Labor VETS representative (located at State employment service offices). To be eligible to file a complaint under the MOU a veteran must:

- have served on active duty for more than 180 days and have other than a dishonorable discharge;
- have a service-connected disability; or
- if a member of a Reserve component, have been ordered to active duty under sections 12301 (a), (d), or (g) of title 10, United States Code, or served on active duty during a period of war, or received a campaign badge or expeditionary medal (e.g., the Southwest Asia Service Medal).

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) prohibits discrimination in employment, retention, promotion, or any benefit of employment on the basis of a person's service in the uniformed services. Complaints under this law should also be filed with the local Department of Labor VETS representative (located at State employment service offices).

Since a willful violation of a provision of law or regulation pertaining to veterans' preference is a Prohibited Personnel Practice, a preference eligible who believes his or her veterans' preference rights have been violated may file a complaint with the local Department of Labor VETS representative, as noted above.

A disabled veteran who believes he or she has been discriminated against in employment because of his or her disability may file a handicapped discrimination complaint with the offending agency under regulations administered by the Equal Employment Opportunity Commission.

Finally, since OPM is committed to ensuring that agencies carry out their responsibilities to veterans, any veteran with a legitimate complaint may also contact any OPM Service Center.

Because there is considerable overlap in where and on what basis a complaint may be filed, a veteran should carefully consider his or her options before filing. Generally speaking, complaints on the same issue may not be filed with more than one party.

Uniformed Services Employment and Reemployment Rights Act

Federal employees who enter the Uniformed Services have certain obligations and rights related to their civilian jobs. This section summarizes the rights and obligations provided by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). Federal agencies are required to tell employees who enter the service about their entitlements, obligations, benefits, and appeal rights.

Covered Employees

All employees, permanent and nonpermanent, in executive agencies, including the U.S. Postal Service, the Postal Rate Commission, and nonappropriated fund employees are covered by the law. Employees in the intelligence agencies have basically the same rights, but are covered under agency regulations rather than OPM's. These employees also have different appeal rights.

Covered Service

The service that is covered is:

- All service, voluntary or involuntary, with the Armed Forces (including active duty, active duty for training, initial active duty for training, and absence for service fitness examination);
- National Guard when engaged in active duty for training, inactive duty training, or full-time Guard duty;
- Commissioned Corps of the Public Health Service; and
- Other groups designated by the President in time of war or emergency.

To have restoration rights, the employee must:

- Give the agency advance notice (except when prevented by military circumstances);
- Be released from the military under honorable conditions;
- Serve no more than a cumulative total of 5 years (exceptions are allowed for training and involuntary active duty extensions, and to complete an initial service obligation of more than 5 years); and
- Apply for restoration within the appropriate time limits (see "Time Limits for Restoration" below).

Employees in a Reserve component have an obligation to both the military and their civilian employers. Some conflict may be unavoidable, and good-faith efforts by the employee and the agency are needed to resolve any differences.

Agencies may not question the timing, frequency, duration, and nature of the uniformed service, but employees are obligated to try to minimize the agency's burden. For example, employees should give as much advance notice as possible when their military service will interfere with their civilian work.

When there is a conflict between Reserve duty and the legitimate needs of the agency, the agency may contact appropriate military authorities to express concern or determine if the military service could be rescheduled or performed by another member. If military authorities determine that the service is necessary, the agency is required to permit the employee to go.

Time Limits for Restoration

Employees who served:

- Less than 31 days (or who leave to take a fitness exam for service) must report back for civilian duty at the beginning of the next regularly scheduled work day following their release from service and the expiration of 8 hours after a time for safe transportation back to the employee's residence.
- More than 30 but less than 181 days must apply for reemployment within 14 days of release from service.
- More than 180 days have 90 days after completion of service to apply for restoration.

Employees who fail to return or apply within these time limits are subject to disciplinary action. Agencies must reemploy as soon as practicable, but no later than 30 days after receiving the application. Agencies have the right to ask for documentation showing the length and character of the employee's service and the timeliness of the application.

Positions To Which Restored

Employees who served less than 91 days must be placed in the position for which they are qualified and would have attained if their employment had not been interrupted. If not qualified for such position after reasonable efforts by the agency to qualify the person, the employee is entitled to be placed in the position he or she left.

Employees who served more than 90 days have essentially the same rights as above, except that the agency has the option of placing the employee in a position for which they are qualified, with like seniority, status, and pay.

Employees with service-connected disabilities who are not qualified for the above must be reemployed in a position that most closely approximates the position they would have been entitled to, consistent with the circumstances in each case.

Employees serving under time-limited appointment serve out the unexpired portions of their appointments upon return.

OPM Placement

When an employee applies to OPM for restoration and OPM determines that it is impossible or unreasonable for an agency in the executive branch (other than an intelligence agency) to place a returning employee, OPM will order the employee placed in another agency.

If the returning employee is a member of an intelligence agency, a noncareer National Guard technician who was separated involuntarily from the Guard for reasons beyond his or her control, or a legislative or judicial branch employee, OPM will order the individual placed in another agency when the previous employer notifies OPM that it is impossible or unreasonable to reemploy the individual and he or she applies to OPM for placement assistance.

How Service Is Credited

Upon restoration, employees are generally entitled to be treated as though they had never left. This means that time spent in the uniformed service counts for seniority, within-grade increases, completion of probation, career tenure, retirement, and leave rate accrual. (Employees do not earn sick or annual leave while off the rolls or in a nonpay status.)

Employee Protections

Employees who enter the Uniformed Services are not subject to a reduction in force while they are in service. After their return, they may not be discharged (except for cause) for 1 year if they served for more than 180 days, or for 6 months if they served for more than 30 but less than 181 days.

The law prohibits an agency from discriminating against or taking any reprisal against an applicant or employee because of his or her application, membership, or service in the Uniformed Services.

Appeal Rights

Individuals who believe their agency has not complied with the law or with OPM's regulations may file a complaint with the Department of Labor or appeal directly to the Merit Systems Protection Board.

Paid Military Leave

Employees serving under permanent appointment are entitled each fiscal year to 15 days of military leave, with pay, to perform active duty service as a member of a Reserve component. Part-time employees are entitled to military leave prorated according to the tour of duty.

Employees may carry over 120 hours of unused military leave into a new fiscal year. Therefore, potentially they may have a total of 240 hours to use in any one fiscal year. This means that Reservists whose military duty spans two fiscal years may use up to 360 hours of military leave at one time. Reservists may now use military leave to cover drill periods since monthly drills are considered inactive duty training and military leave may now be used for that purpose.

Employees may carry over 15 days of unused military leave into the new fiscal year so they may potentially have a total of 30 days to use in any one fiscal year. This means reservists whose military service spans 2 fiscal years could use up 45 days of military leave at one time.

Note that the U.S. Court of Appeals for the Federal Circuit ruled in July 2003 that federal employees should be charged paid military leave for 15 workdays each year, rather than 15 calendar days.

In the case of Butterbaugh v. Department of Justice (U.S. Court of Appeals for the Federal Circuit, No. 02-3331, July 24, 2003), four employees working for the Justice Department's Federal Bureau of Prisons, who were also members of the military reserves, filed suit alleging that the Justice Department was impermissibly charging them military leave for days on which they were not scheduled to work. As reservists, the employees were required to attend military training sessions each year. By statute, 5 U.S.C. section 6323(a)(1), federal employees are granted up to "15 days" of paid leave to attend reserve or National Guard training.

Prior to 2000, the Justice Department, as other federal agencies had done for decades, had included days on which employees were not scheduled to work (e.g., weekends and holidays) when calculating how much military leave employees took. For instance, an employee (with a Monday- Friday workweek) attending reserve training from one Friday through the next would be charged for eight days of military leave, even though the employee was absent for only six workdays. Thus, the agency measured the grant of military leave by the number of calendar days employees spent in reserve training, rather than by the number of workdays on which they were absent from work. (In 2000, Congress amended the statute adding a provision stating that the minimum charge for military leave was one hour, causing OPM to conclude that federal employees should not be charged military leave for nonworkdays.)

At least in part due to this accounting practice, the four employees complained that, prior to 2000, they were forced to supplement their statutory military leave with other leave time to meet their reserve training obligations. They claimed that they had to take annual leave or leave without pay in order to serve the full period of their reserve training. Accordingly, they filed suit before the U.S. Merit Systems Protection Board (MSPB) claiming that the agency's pre-2000 practice of charging their military leave for non-workdays violated the Uniformed Services Employment and Reemployment Act of 1994 (USERRA), by denying them an employment benefit based on their military service. While the MSPB upheld the 15 calendar days rule, the Federal Circuit reversed, ruling that the employees were correct in their interpretation that "15 days" meant 15 workdays.

Life Insurance
The life insurance of an employee who takes leave without pay to enter uniformed service can continue for up to 12 months. If the employee separates to enter the uniformed service, life insurance continues for up to 12 months, or until 90 days after uniformed service ends, whichever is sooner. The insurance is provided at no cost to the employee.

Health Insurance
Employees who enter uniformed service can continue their health insurance for up to 12 months, although employees continue to pay their share of the premium.

Employees who remain in uniformed service longer than 12 months may continue health benefit coverage for up to an additional 6 months by paying 102 percent of the premium (i.e., the employee's share, the agency's share, and a 2 percent administrative fee).

Retirement Credit
All uniformed service performed for the United States is generally creditable for civil service retirement. USERRA makes full-time National Guard duty creditable for retirement purposes if it interrupts creditable civilian service and is followed by restoration after August 1, 1990.

To get credit for their uniformed service after August 1, 1990, employees are required to pay to the retirement fund 3 percent towards Federal Employees Retirement System (FERS) or 7 percent towards Civil Service Retirement System (CSRS) of the military basic pay, or, if less, the amount of civilian retirement deductions that would have been withheld had the individual not entered military service. Interest is added under certain circumstances.

Thrift Savings
USERRA allows employees to make up the contributions to the Thrift Savings Plan that they missed because of their uniformed service.

Additional Help
Employees with questions should first contact their Personnel office. By law, the Department of Labor's Veterans' Employment and Training Service (VETS) provides assistance to Federal employees or applicants. VETS staffers try to resolve disputes, and may also ask the Office of the Special Counsel to represent the individual in an appeal before the Merit Systems Protection Board.

Other help is available from the following organizations:
- The Ombudsman for the National Committee for Employer Support of the Guard and Reserve at 1-800-336-4590;
- any national veterans' service organization; or
- the OPM Service Center.

Employment of Military Retirees

On October 5, 1999, the President signed the National Defense Authorization Act for Fiscal Year 2000 (P.L.106-65). Section 651 of this law repeals section 5532 of title 5, United States Code. This action ends the reductions in retired or retainer pay previously required of retired members of a uniformed service who are employed in a civilian office or position of the U.S. Government. This repeal is effective retroactively to October 1, 1999.

The repeal ends two former reductions in military retired pay that applied to some Federal employees:

1. The pay cap that limited the combined total of Federal civilian basic salary plus military retired pay to Executive Level V for all Federal employees who are retirees of a uniformed service; and
2. The partial reduction in retired pay required of retired officers of a regular component of a uniformed service.

As a consequence of the repeal, prior exceptions and waivers to these reductions approved by OPM, or by agencies under delegated authority, are no longer needed effective October 1, 1999.

The uniformed services finance centers are responsible for making all adjustments in military retired or retainer pay for current Federal employees.

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Reductions In Force

Agencies turn to a Reduction In Force (RIF) when they need to separate or downgrade employees due to a reorganization, lack of work, shortage of funds, insufficient personnel ceiling, or the exercise of certain reemployment or restoration rights. A furlough of more than 30 calendar days, or of more than 22 discontinuous days, is also considered a RIF action. (A furlough of 30 or fewer calendar days, or of 22 or fewer discontinuous work days, however, is considered an adverse action.) RIF procedures may not be used to take performance or conduct-based adverse actions.

The law provides that OPM's RIF regulations must give effect to four factors in releasing employees:

(1) tenure of employment (e.g., type of appointment);
(2) veterans preference;
(3) length of service; and
(4) performance ratings.

OPM implements the laws through regulations published in Part 351 of Title 5, Code of Federal Regulations.

The agency has the responsibility to decide whether a RIF is necessary, when it will take place, and what positions are to be abolished. However, the abolishment of a position does not always require the use of RIF procedures. The agency may reassign an employee without regard to RIF procedures to a vacant position at the same grade or pay, regardless of where the position is located.

RIF Steps

When conducting a RIF, agencies by law must follow specific steps, as described below.

Competitive Area. Before a RIF begins, the agency defines the competitive area (e.g., the geographical and organizational boundary within which employees compete for retention). A competitive area may consist of all or part of an agency. The minimum competitive area is a subdivision of an agency under separate administration within a local commuting area. If an agency wants to change a competitive area within 90 days of a RIF, the agency must obtain OPM's approval for the change.

Competitive Level. Next, the agency groups similar positions into competitive levels based on grade, series, qualifications, duties and working conditions. Positions with different types of work schedules (e.g., full-time, part-time, intermittent, seasonal, or on-call) are placed in different competitive levels. Finally, competitive and excepted service positions are placed in separate competitive levels.

A typical competitive level would group all full time, competitive service GS-201-11 personnel management specialists with interchangeable duties based on their position descriptions in the same competitive level. These GS-201-11 specialists would be in a separate competitive level from any part-time, competitive service GS-201-11 specialists, as well as from any full time, competitive service GS-201-12 specialists.

Retention Registers. Next, the four retention factors are applied so that each of the employees in the competitive level is ranked in order based on their RIF retention standing. When this listing is done,

each competitive level becomes a retention register, because it lists employees in order of their RIF retention standing. RIF retention standing is based on a combination of the following factors -

(1) Tenure. Employees are ranked on a retention register in three groups according to their type of appointment:

- Group I - Career employees who are not serving probation. (A new supervisor or manager who is serving a probationary period that is required on initial appointment to that type of position is not considered to be serving on probation if the employee previously completed a probationary period.)
- Group II - Career employees who are serving a probationary period, and career-conditional employees.
- Group III - Employees serving under term and similar non-status appointments.

Note: An employee serving under a temporary appointment in the competitive service is not a competing employee for RIF purposes and is not listed on the retention register at all. Such employees may be separated at any time at the discretion of the agency without regard to RIF procedures.

(2) Veterans' Preference. Each of these groups is divided into three subgroups reflecting their entitlement to veterans preference:

- Subgroup AD -Veterans with a compensable service-connected disability of 30% or more.
- Subgroup A - Veterans not included in subgroup AD.
- Subgroup B - Nonveterans.

Having a background that includes military service does not guarantee that an employee will be entitled to veterans' preference for RIF. Veterans' preference is awarded to those individuals who served:

- During the period December 7, 1941, to July 1, 1955; or
- For more than 180 consecutive days, any part of which occurred after January 31, 1955, and before October 15, 1976; or
- During the period beginning August 2, 1990 and ending January 2, 1992; or
- In a campaign or expedition for which a campaign medal has been authorized.

Medal holders who enlisted after September 7, 1981, must have served continuously for 24 months or the full period called or ordered to active duty. This is not applicable to those veterans with compensable disabilities, or veterans separated for disability in the line of duty, or for hardship.

Medal holders who entered on active duty on or after October 14, 1982 must have served continuously for 24 months or the full period called or ordered to active duty. This is not applicable to those veterans with compensable disabilities, or veterans separated for disability in the line of duty, or for hardship.

Veterans' preference may also be awarded to:

- An unmarried spouse of certain deceased veterans;
- A spouse of a veteran unable to work because of a service-connected disability; or
- A mother of a veteran who died in service or who is permanently and totally disabled.

In order to receive veterans' preference, an honorable or general discharge is necessary. Military retirees at the rank of major, lieutenant commander, or higher are not eligible for veterans' preference unless they are disabled veterans. Guard or Reserve active duty for training purposes does not qualify

for veterans' preference. Any questions concerning veterans' preference eligibility should be addressed to the employee's servicing personnel office.

NOTE FOR MILITARY RETIREES: A retired member of the armed forces is considered to be a veteran for RIF purposes only if the veteran meets one of the following: (i) The armed forces retired pay is directly based upon a combat-incurred disability or injury; (ii) The armed forces retirement is based upon less than 20 years of active service; or (iii) The employee has been working for the Government since November 30, 1964 without a break in service of more than 30 days. (If the veteran meets condition (iii) but retired at the rank of major or higher (or equivalent), he or she must also meet the general definition of disabled veteran in Section 2108(2) of Title 5, United States Code, in order to be a veteran for RIF purposes.)

Tenure group and veterans' preference are combined to form the employee's TENURE SUBGROUP. For example, a disabled veteran on a career-conditional appointment would be in subgroup II AD.

(3) Length of Service. Within each tenure subgroup, employees are ranked for RIF retention by service dates. RIF service dates begins with all creditable civilian and military service, and this date is then adjusted with additional service credit for certain performance ratings. Employees with more creditable service are ranked ahead of those with less service in each subgroup. For example, an employee with a service date of August 1, 1974 is listed before an employee with a service date of January 15, 1981.

(4) Performance. Employees receive extra RIF service credit for performance based upon the average of their last three annual ratings of record received during the 4-year period prior to the date the agency issues RIF notices. The 4-year period begins on the date the agency issues RIF notices, or the date the agency freezes ratings before issuing RIF notices, if earlier.

The ratings are: "O" is Outstanding; "EFS" is Exceeds Fully Successful; "FS" is Fully Successful; "MS" is Minimally Successful; and "U" is Unacceptable. Employees receive extra credit only for ratings of Fully Successful or above.

For ratings put on record on or before September 30, 1997, the standard values are used for giving credit, regardless of which type of summary rating pattern (such as "Pass/Fail" or "5-level") was used. The standard values are:

- 20 years for an "Outstanding" rating;
- 16 years for an "Exceeds Fully Successful" rating;
- 12 years for a "Fully Successful" rating.

For ratings received on or after October 1, 1997, agencies under certain circumstances may use a different method of assigning years of credit to ratings given to ratings at or above the "Fully Successful" level. They still must use a whole number between 12 and 20 years, but they are not required to use the standard values.

An employee receives additional service credit based on the average (rounded up in the case of a fraction to the next whole number) of the value of the employee's last three annual ratings.

If an employee received more than three annual ratings during the 4-year period, the three most recent annual ratings are used. If an employee received fewer than three annual ratings during the 4-year period, the values of the ratings are added together and averaged (i.e., if two ratings were given, their

values are added together and divided by two; if only one rating was received, its value is divided by one).

Example: An employee with two years of Federal service received only 2 ratings of record. One rating is an "Outstanding" (20) and one is "Exceeds Fully Successful" (16). The employee would receive additional RIF service credit based upon the two actual ratings or 20 + 16 = 36, divided by 2. The result is 18 years of RIF credit for performance.

A few employees may find themselves with no ratings of record at all due to unusual circumstances such as extended absence for military duty or injury, for example. These employees will receive performance credit based on the performance rating most often given to employees in the organization. This value, called a "modal rating" will be calculated by the agency personnel office.

The years of performance credit are added onto the service computation date to form an adjusted service computation date which is used in determining RIF retention standing.

Running Registers

Putting employees in RIF retention order is commonly referred to in personnel as "running a register." Agencies normally run registers two ways: (1) within each competitive level; and (2) based on overall RIF retention order regardless of series, grade, etc. Number (1) is usually called a competitive level register and number (2) is often referred to as an "absolute" or "master retention" listing.

Many agencies run registers from computer programs specifically designed for reduction in force. The most common program is AUTORIF, created by the Department of Defense. This program is used by many civilian agencies as well.

Release

Agencies determine how many positions in a given series and grade they need to abolish, and this begins the RIF process. If an employee's position is abolished, this may result in their being "released", or cut, from their competitive level. Employees are released from the competitive level in the inverse order of their retention standing. (For example, the employee with the lowest RIF standing is the individual who is actually released from the competitive level.) Employees in Group III are released before employees in Group II, and employees in Group II are released before employees in Group I. Within tenure subgroups, employees in Subgroup B are released before employees in Subgroup A, and employees in Subgroup A are released before employees in Subgroup AD. Within each subgroup, employees with less service are released before employee's with more service. Any employee reached for release out of this regular order must be notified of the reasons.

Rights To Other Positions: Bumping And Retreating

After employees are released from their competitive level, they may have rights to other positions by exercising assignment rights, which are commonly referred to as bumping and retreating.

"Bumping" means displacing an employee in the same competitive area who is in a lower tenure group, or in a lower subgroup within the released employee's own tenure group. For example, an employee in Tenure group I can bump an employee in Tenure groups II or III, and an employee in Subgroup IAD can bump someone in Subgroups IA or IB. Although the released employee must be qualified for the position, it may be a position that he or she has never held. The position must be at the same grade, or within three grades or grade-intervals, of the employee's present position.

"Retreating" means displacing an employee in the same competitive area and in the same tenure group and subgroup who has less service. For example, a IA employee might be able to retreat to the position of another IA employee who has less service. The position must be at the same grade, or within three grades or grade-intervals, of the employee's present position. The position into which the employee is retreating must also be the same position (or an essentially identical position) previously held by the released employee in any Federal agency on a permanent basis.

Employees in retention subgroup AD have expanded retreat rights to positions up to five grades or grade-intervals lower than the position held. In addition, an employee with a current annual performance rating of "Minimally Successful" only has retreat rights to positions held by employees with the same or lower current performance rating.

Employees in Groups I and II with current performance ratings of at least "Minimally Successful" are entitled to an offer of assignment if they have "bumping" or "retreating" rights to an available position in the same competitive area. An "available" position must: (i) last at least 3 months; (ii) be in the competitive service; (iii) be one the released employee qualifies for; and (iv) be within three grades (or grade-intervals) of the employee's present position.

Employees in Groups I and II with current performance ratings of "Unsuccessful," and all employees in Group III, have no assignment rights to other positions. Employees holding excepted service positions have no assignment rights unless their agency, at its discretion, chooses to offer these rights.

The grade limits of an employee's assignment rights are determined by the grade progression of the position from which the employee is released. The difference between successive grades in a one-grade occupation is a grade difference, and the difference between successive grades in a multi-grade occupation is a grade-interval difference. The grade limits are based upon the position the employee holds at the time of the RIF.

For example, an employee released from a GS-11 position that progresses GS-5-7-9-11 has bump and retreat rights to positions from GS-11 through GS-5. An employee released from a GS-9 position that progresses GS-6-7-8-9 has bump and retreat rights to positions from GS-9 through GS-6.

Vacant Positions

An agency is not required to offer vacant positions in a RIF, but may choose to fill all, some, or none of them. When an agency chooses to fill a vacancy with an employee reached for RIF action, subgroup retention standing is followed. A RIF offer of assignment to a vacant position can only be in the same competitive area, and must be within three grades (or grade-intervals) of the employee's present position. At its discretion, the agency may offer employees reassignment, or voluntary change to a lower-graded position, in the same or other competitive areas in lieu of RIF.

RIF Notices

An agency must give each employee at least 60 days specific written notice before he or she is reached for RIF action. In a Department of Defense RIF in which 50 or more employees in a competitive area are receiving separation notices, the agency must give the employee a minimum of 120 days specific written notice. In exceptional circumstances, an agency may, with prior OPM approval, give employees less than 60 days, but not less than 30 days, specific written notice of a RIF action.

RIF Appeals And Grievances

Right To Appeal. An employee who has been affected by RIF and separated, downgraded or furloughed for more than 30 days, has the right to appeal to the Merit Systems Protection Board (MSPB) if he or she believes the agency did not properly follow the RIF regulations. The appeal must be filed during the 30-day period beginning the day after the effective date of the RIF action.

If the MSPB rules in favor of the employee, the agency must restore the employee to the separated position or assign the employee to another appropriate position. The agency can be required to give back pay to the affected employee.

Right To Grieve. An employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude RIF must use the negotiated grievance procedure and may not appeal the RIF action to MSPB unless the employee alleges the action was based upon discrimination. The time limits for filing a grievance are set forth in the collective bargaining agreement.

If an employee feels he or she has been discriminated against during a RIF, the employee should contact the agency EEO counselor for information on available options.

9

Workers' Compensation and Reemployment Rights

The Federal Employees' Compensation Act provides workers' compensation coverage to three million Federal and Postal workers around the world for employment-related injuries and occupational diseases. Benefits include wage replacement, payment for medical care, and where necessary, medical and vocational rehabilitation assistance in returning to work. The program has 12 district offices nationwide.

The Division of Federal Employees' Compensation adjudicates new claims for benefits and manages ongoing cases; pays medical expenses and compensation benefits to injured workers and survivors; and helps injured employees return to work when they are medically able to do so.

During fiscal year 2000, the program provided nearly 273,000 workers slightly more than $2 billion in benefits for work-related injuries and illnesses. Of these benefit payments, nearly $1.37 billion was for wage loss compensation, $549 million was for medical and rehabilitation services, and $107 million was for death benefit payments to surviving dependents.

Services Provided

Prompt Adjudication. If you are an injured worker, you can expect timely adjudication of your compensation claim:

- For traumatic injuries, this means a decision within 45 days of receipt in all but the most complex cases.
- For simple occupational illness cases, a decision will be issued within 90 days of receipt.
- For most occupational illness cases, which require more extensive evidentiary development, a decision should be forthcoming within six months of receipt.
- For very complex occupational illness cases, a decision should be rendered within 10 months of receipt.

Prompt Payment of Medical Bills. Medical bills, whether submitted directly by the providers or as reimbursement requests by injured workers, are usually processed within 28 days of receipt. For any bill that is not payable, an Explanation of Benefits describing the reason for non-payment is issued to the party who submitted the bill.

Prompt Payment of Compensation. Injured workers can also expect prompt payment of claims for wage loss in accepted cases. Where medical evidence supports disability for work, compensation payments are usually made within 14 days of submittal to the district office by the employing agency.

Assistance in Returning to Work. The Federal Employees' Compensation Act gives injured workers the right to reclaim their Federal jobs within one year of the onset of wage loss. The Division of Federal Employees' Compensation assists employees in returning to work during that time period, and, if necessary, beyond. Injured workers and employing agencies can expect timely case management services, which include the following:

- Assignment of a registered nurse if the injured employee cannot return to work soon after the injury. The nurse ensures that appropriate medical care is provided and assists the worker in returning to employment.
- Referral to a medical specialist for a second opinion examination where required by the worker's medical condition or the program's need for additional medical information.
- Referral for vocational rehabilitation services if the employee is unable to return to work at the employing agency or in his or her previous job category.

Funding

Employing agencies are responsible for reimbursing the Division of Federal Employees' Compensation for their workers' compensation expenses. This reimbursement occurs once each year through the charge back process.

The administrative cost of the services provided by the Division of Federal Employees' Compensation is very low. Overhead costs are just 4% of benefits, and Federal workers' compensation costs are only 1.8% of total Federal and Postal payrolls, compared to 2.3% for private insurance and state funds.

Also, because disputes in claims under the Federal Employees' Compensation Act are resolved administratively, the Federal government avoids time-consuming and expensive litigation, which in some non-Federal workers' compensation systems can account for as much as 46% of payout.

When Injured At Work

The Federal Employees' Compensation Act (FECA) is administered by the Office of Workers' Compensation Programs (OWCP) of the U.S. Department of Labor. It provides compensation benefits to civilian employees of the United States for disability due to personal injury sustained while in the performance of duty or to employment-related disease. The FECA also provides for the payment of benefits to dependents if the injury or disease causes the employee's death. Benefits cannot be paid if the injury or death is caused by the willful misconduct of the employee or by the employee's intention to bring about his or her injury or death or that of another, or if intoxication (by alcohol or drugs) is the proximate cause of the injury or death.

Medical Benefits

An employee is entitled to medical, surgical and hospital services and supplies needed for treatment of an injury as well as transportation for obtaining care. The injured employee has the initial choice of a physician and may select any qualified local physician or hospital to provide necessary treatment or may use agency medical facilities if available. Except for referral by the attending physician, any change in treating physician after the initial choice must be authorized by OWCP. Otherwise, OWCP will not be liable for the expenses of treatment.

The term "physician" includes surgeons, osteopathic practitioners, podiatrists, dentists, clinical psychologists, optometrists and chiropractors within the scope of their practice as defined by State law. Payment for chiropractic services is limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist. If the physician selected has been excluded from participating in the Compensation Program, the OWCP District Office will advise the employee of the exclusion and the need to select another physician.

Compensation for Temporary Total Disability

An employee who sustains a disabling, job-related traumatic injury may request continuation of regular pay for the period of disability not to exceed 45 calendar days or sick or annual leave. If disability continues beyond 45 days or the employee is not entitled to continuation of pay, the employee may use sick or annual leave or enter a leave without pay status and claim compensation from OWCP.

When disability results from an occupational disease, the employing agency is not authorized to continue the employee's pay. The employee may use sick or annual leave or enter a leave without pay status and claim compensation.

Compensation for loss of wages may not be paid until after a three-day waiting period, except when permanent effects result from the injury or where the disability causing wage loss exceeds 14 calendar days. Compensation is generally paid at the rate of 2/3 of the salary if the employee has no dependents, and 3/4 of the salary if one or more dependents are claimed.

The term "dependent" includes a husband, wife, unmarried child under 18 years of age, and a wholly dependent parent. An unmarried child may qualify as a dependent after reaching the age of 18 if he or she is incapable of self-support by reason of mental or physical disability, or as long as the child continues to be a full-time student at an accredited institution, until he or she reaches the age of 23 or has completed four years of education beyond the high school level.

Compensation for Permanent Effects of Injury

The Act provides a schedule of benefits for permanent impairment of certain members, functions and organs of the body such as the eye, arm, or kidney, and for serious disfigurement of the head, face or neck. For example, an award of 160 weeks of compensation is payable for total loss of vision in one eye.

In addition, compensation for loss of earning capacity may be paid if the employee is unable to resume regular work because of injury-related disability. This compensation is paid on the basis of the difference between the employee's capacity to earn wages after an injury and the wages of the job he or she held when injured.

OWCP may arrange for vocational rehabilitation and provide a maintenance allowance not to exceed $200 per month. A disabled employee participating in an OWCP-approved training or vocational rehabilitation program is paid at the compensation rate for total disability. If the employee's condition requires a constant attendant, an additional amount not to exceed $1500 per month may be allowed.

Compensation for Death

If no child is eligible for benefits, the widow or widower's compensation is 50 percent of the employee's pay at the time of death, if death was due to the employment-related injury or disease. If a child or children are eligible for benefits, the widow or widower is entitled to 45 percent of the pay and each child is entitled to 15 percent. If children are the sole survivors, 40 percent is paid for the first child and 15 percent for each additional child, to be shared equally. Other persons such as dependent parents, brothers, sisters, grandparents, and grandchildren may also be entitled to benefits. The total compensation may not exceed 75 percent of the employee's pay or the pay of the highest step for GS-15 of the General Schedule, except when such excess is created by authorized cost-of-living increases.

Compensation to an employee's surviving spouse terminates upon his or her death or remarriage. A widow or widower's benefits continue, however, if the remarriage takes place after the age of 55. Awards to children, brothers, sisters and grandchildren terminate at the age of 18, unless the dependent is incapable of self-support, or continues to be a full-time student at an accredited institution, until he or she reaches the age of 23, or has completed four years of education beyond the high school level.

Burial expenses not to exceed $800 are payable. Transportation of the body to the employee's former residence in the United States is provided where death occurs away from the employee's home station. In addition to any burial expenses or transportation costs, a $200 allowance is paid for the administrative costs of terminating an employee's status with the Federal Government.

Cost-of-Living Increases

Compensation payments on account of a disability or death that occurred more than one year before March 1 of each year are increased on that date by any percentage change in the Consumer Price Index published for December of the preceding year.

Settlements With Third Parties

Where an employee's injury or death in the performance of duty occurs under circumstances placing a legal liability on a party other than the United States, a portion of the cost of compensation and other benefits paid by OWCP must be refunded from any settlement obtained. OWCP will assist in obtaining the settlement and the Act guarantees that the employee may retain a certain proportion of the settlement (after any attorney fees and costs are deducted) even when the cost of compensation and other benefits exceeds the amount of the settlement.

Appeal Rights

An employee or survivor who disagrees with a final determination of OWCP may request an oral hearing or a review of the written record from the Branch of Hearings and Review. Oral and/or written evidence in further support of the claim may be presented. The employee may also request a reconsideration of a decision by submitting a written request to the District Office that issued the decision. The request must be accompanied by evidence not previously submitted. If reconsideration has been requested, a hearing on the same issue may not be granted. The employee or survivor may also request review by the Employees' Compensation Appeals Board (ECAB). Because the ECAB rules solely on the evidence of record at the time the decision was issued, no additional evidence may be presented.

If You Are Injured On The Job

1. Learn about your eligibility for benefits. It is important that you know what you are entitled to, since benefits are not paid automatically. You or your survivors must claim them.

2. In case of injury, obtain first aid or medical treatment even if the injury is minor. While many minor injuries heal without treatment, a few result in serious, prolonged disability that could have been prevented had the employee received treatment when the injury occurred.

For traumatic injuries, ask your employer to authorize medical treatment on Form CA-16 before you go to the doctor. Take Form CA-16 with you when you go to the doctor, along with Form OWCP-1500, which the doctor must use to submit bills to OWCP. Your employer may authorize medical treatment for occupational disease only if OWCP gives prior approval.

Be sure to submit bills promptly, since bills for medical treatment may not be paid if submitted to OWCP more than one year after the calendar year in which you received the treatment, or in which the condition was accepted as compensable.

3. Report every injury to your supervisor. Submit written notice of your injury on Form CA-1 if you sustained a traumatic injury, or Form CA-2 if the injury was an occupational disease or illness. (Forms CA-1 and CA-2 may be obtained from your employing agency or OWCP.)

Form CA-1 must be filed within 30 days of the date of injury to receive continuation of pay (COP) for a disabling traumatic injury. COP may be terminated if medical evidence of the injury-related disability is not submitted to your employer within 10 workdays. You are responsible for ensuring that such medical evidence is submitted to your employing agency. Form CA-2 should also be filed within 30 days. Any claim that is not submitted within 3 years will be barred by statutory time limitations unless the immediate superior had actual knowledge of the injury or death within 30 days of occurrence.

4. Establish the essential elements of your claim. You must provide the evidence needed to show that you filed for benefits in a timely manner; that you are a civil employee; that the injury occurred as reported and in the performance of duty; and that your condition or disability is related to the injury or factors of your Federal employment. OWCP will assist you in meeting this responsibility, which is called burden of proof, by requesting evidence needed to fulfill the requirements of your claim.

5. File a claim for compensation. File Form CA-7, Claim for Compensation on Account of Traumatic Injury or Occupational Disease, if you cannot return to work because of your injury and you are losing (or expect to lose) pay for more than three days. Give the form to your supervisor seven to ten days before the end of the COP period, if you received COP. If you are not entitled to COP, submit Form CA-7 when you enter or expect to enter a leave without pay status. All wage loss claims must be supported by medical evidence of injury-related disability for the period of the claim.

If you continue to lose pay after the dates claimed on Form CA-7, submit Forms CA-8 (Claim for Continuing Compensation on Account of Disability) through your employer to claim additional compensation until you return to work or until OWCP advises they are no longer needed. You are not required to use your sick or annual leave before you claim compensation.

If you choose to use your leave, you may, with your agency's concurrence, request leave buy-back by submitting Form CA-7 to OWCP through your employing agency. Any compensation payment is to be used to partially reimburse your agency for the leave pay. You must also arrange to pay your agency the difference between the leave pay based on your full salary and the compensation payment that was paid at 2/3 or 3/4 of your salary. Your agency will then recredit the leave to your leave record.

6. Return to work as soon as your doctor allows you to do so. If your employing agency gives you a written description of a light duty job, you must provide a copy to your doctor and ask if and when you can perform the duties described. If your agency is willing to provide light work, you must ask your doctor to specify your work restrictions. In either case, you must advise your agency immediately of your doctor's instructions concerning return to work, and arrange for your agency to receive written verification of this information. COP or compensation may be terminated if you refuse work that is within your medical restrictions without good cause, or if you do not respond within specified time limits to a job offer from your agency.

In appropriate cases, OWCP provides assistance in arranging for reassignment to lighter duties in cooperation with the employing agency. In addition, injured employees have certain other specified rights under the jurisdiction of OPM, such as reemployment rights if the disability has been overcome within one year.

7. Tell your family about the benefits they are entitled to in the event of your death. For assistance in filing a claim they may contact your employing agency's personnel office or OWCP. For additional information or when in doubt about your compensation benefits, write to the Office of Workers' Compensation Programs.

Restoration Rights of Injured or Ill Federal Employees

This section provides federal employees with a general overview of their restoration rights following full or partial recovery from a compensable injury.

As explained in the section above, the Federal Employee's Compensation Act (FECA) provides workers' compensation benefits to federal employees who sustain job-related injuries or illnesses. The law also guarantees employees certain job rights upon recovery. Upon their return to work, employees will be treated as though they had never left for purposes of rights and benefits based upon length of service.

The law assigns dual responsibility to the Department of Labor's Office of Workers' Compensation Programs (OWCP) and to OPM. OPM administers the restoration rights provision of the law. OWCP administers all other aspects of the law.

Virtually all federal employees (including employees in the legislative and judicial branches), except those serving under time-limited appointment, have restoration rights upon full or partial recovery from a job-related injury or illness.

Eligibility For Restoration
To be eligible for restoration, the employee must have been receiving benefits from OWCP (or have been eligible for OWCP benefits).

Note: Receipt of a "schedule award" which OWCP pays to an injured worker for permanent impairment of a specified member, function, or organ of the body (e.g., an arm, foot, lung, or loss of vision or hearing) does not necessarily mean the individual has recovered for purposes of restoration rights. It only means that part of the body has reached maximum medical improvement. Restoration rights for full recovery are triggered when compensation is terminated on the basis of medical evidence that the employee no longer has residual limitations from the injury and can return to the former job without limitations.

Disability Retirement
Disability retirement and injury compensation are governed by two separate laws and are administered by two different agencies - OPM and OWCP. Thus, entitlement to one does not automatically establish entitlement to the other.

Ordinarily, an injured employee should apply for both disability retirement and injury compensation. If both are approved, he or she must decide between receiving one or the other. A person who chooses

disability retirement instead of injury compensation has restoration rights, provided he or she applies for restoration as soon as the specific job-related injury has been overcome.

Agency Obligations

An employee who sustains a job-related injury must be allowed to seek treatment from the physician of his or her choice without agency interference. The agency can require the employee to undergo a medical examination by its own doctors for the purpose of determining employability. An agency-required examination has no effect on the payment of compensation benefits by OWCP.

An employee who is unable to perform the full duties of his or her position may be placed on leave without pay (LWOP) or separated at any time. This is a non-disciplinary action and has no effect on the employee's restoration rights upon recovery. However, an agency must tell an employee who is being separated or placed on LWOP how benefits will be affected and what the employee's restoration rights are. The obligation to reemploy rests with the former agency; other agencies have no obligation to reemploy a recovered worker.

Employee Obligations

The employee has an obligation to cooperate with the agency, to keep the agency informed of his or her medical status, and to seek restoration as soon as the medical condition permits.

Four Categories of Restoration Rights

The restoration rights of employees who sustain compensable injuries fall into four separate categories depending on the length and extent of recovery. Other factors affecting restoration rights are the timeliness of the application for restoration, the employee's performance and conduct prior to the injury, and the availability of positions. Full recovery is determined by the cut-off of compensation on the basis that the employee is medically able to resume regular employment.

Note: For purposes of restoration rights, a position with the same seniority, status, and pay means a position that is equivalent to the former one in terms of pay, grade, type of appointment, tenure, work schedule, and, where applicable, seniority. Standing in the organization, such as first or second supervisory level, is not a factor.

Fully recovered within one year. An employee who fully recovers within one year from the date compensation began has mandatory restoration rights to the position he or she left, or to an equivalent position. An employee's basic entitlement is to a position in the former commuting area. If a suitable vacancy does not exist, the restoration right is agencywide. The employee must apply for restoration immediately and must be restored immediately and unconditionally by his or her former agency.

Fully recovered after one year. If full recovery takes longer than one year from the date compensation begins, the individual is entitled to priority consideration for the former position or an equivalent one, provided he or she applies for restoration within 30 days of the date compensation ceases. Priority consideration means the agency enters the individual on its reemployment priority list. If the agency cannot place the individual in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency.

Physically disqualified. An individual who is medically unable to return to his or her former occupation, but who is able to do other work, is considered to be physically disqualified. He or she is entitled, within one year of the date compensation begins, to be placed in a position that most closely

approximates the seniority, status, and pay to which otherwise entitled, according to the circumstances in each case. This restoration right, too, is agency-wide. After one year, the individual is entitled to the same restoration rights as individuals who partially recover.

The difference between a physically disqualified employee and one who is partially recovered is that the partially recovered employee is expected to fully recover eventually. By contrast, the physically disqualified employee typically has a permanent medical condition, such as the loss of an arm, which is disqualifying and makes it unlikely that he or she will ever be able to return to the former position.

Partially recovered. An individual who has not yet fully recovered, but who is able to work in some capacity, is entitled to be considered for employment in the former commuting area. The agency must make every effort to place the employee but there is no absolute right to restoration. If the individual is restored at a lower grade or pay level, OWCP will make up the difference in pay, or the agency may elect to pay the employee at the former rate. If the employee later fully recovers, he or she is then entitled to the restoration rights of a fully recovered employee, according to the timing of the recovery. A partially recovered employee has an obligation to seek employment within his or her capabilities. If a partially recovered employee refuses to accept a suitable job offer, OWCP may terminate compensation. OWCP determines whether an agency job offer is suitable according to the individual's medical restrictions, education, and vocational background.

Effect of Performance and Conduct on Restoration Rights

If an employee was separated because of a compensable injury, the agency cannot refuse to restore the individual because of alleged poor performance prior to the injury. In other words, the agency may not use the injury as a basis to circumvent performance-based or adverse action procedures that would otherwise apply. However, an allegation of an on-the-job injury by an employee does not stop an agency from taking action against the employee for performance or conduct. If an employee is removed for cause (performance or conduct) he or she has no restoration rights.

Status Upon Recovery

An employee who is restored following compensable injury is generally entitled to be treated as though he or she had never left. This means that the entire period the employee was receiving compensation or continuation of pay is creditable for purposes of rights and benefits based upon length of service, including within-grade increases, career tenure, time-in-grade restrictions, leave rate accrual, and completion of the probationary period. However, an employee does not earn sick or annual leave while off the rolls or in a non-pay status. The injured employee is also generally entitled to be considered for promotion as though still present. This means that an employee who occupies a career ladder position, or whose position is reclassified at a higher grade, is entitled to be considered for promotion under the provisions of the agency's merit promotion plan. However, an employee on compensation is generally not entitled to a promotion unless it is clear that the employee would have been promoted if the injury had not occurred.

RIF Protection

An injured employee enjoys no special protection in a reduction in force (RIF) and can be separated like any other employee. An injured employee separated by RIF has no restoration rights.

Placement in Other Agencies

The primary responsibility to reemploy an injured worker rests with the employee's former agency. However, if the employee's executive branch agency has been abolished, or the legislative or judicial

branch is unable to place employees eligible for competitive status, OPM will provide placement assistance.

Appeal Rights

Executive branch employees who are entitled to restoration or priority consideration because of a compensable injury, may appeal to the Merit Systems Protection Board as follows:

- An employee who fully recovers within one year or who is physically disqualified may appeal the agency's failure to restore or improper restoration.
- An employee who takes longer than one year to fully recover may appeal the agency's failure to place the employee on its reemployment priority list; the agency's failure to reemploy the individual from the priority list by showing that restoration was denied because of the employment of another person who otherwise could not properly have been appointed; or the agency's failure to place the employee in an equivalent position with credit for all rights and benefits.
- A partially recovered employee may appeal by showing that the agency's failure to reemploy is arbitrary and capricious. If reemployed, the employee may appeal the agency's failure to credit time spent on compensation for all benefits based upon length of service.

Appeals must generally be filed with 30 calendar days of the action being appealed.

Additional Assistance

Employees should direct all questions about compensation to the servicing OWCP office. Agency personnel offices can answer questions about restoration rights.

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Important Federal Agencies

As a Federal employee, there are a number of agencies that directly affect your employment with Uncle Sam. Brief descriptions of these agencies - and their responsibilities with respect to your Federal employment - are described in this chapter.

Office of Personnel Management

The Office of Personnel Management (OPM) serves as the federal government's central personnel office. Some of its chief duties are:

- working with agencies to create systems to recruit, develop, manage and retain a high quality and diverse workforce;
- protecting merit principles and veterans' preference;
- serving federal agencies, employees, retirees, their families, and the public through technical assistance, employment information, pay administration, and benefits delivery;
- safeguarding employee benefit trust funds;
- providing leadership to strengthen human resources management throughout the government;
- helping set human resources management rules with agencies' involvement;
- supporting agencies in workforce restructuring; and
- managing federal employee health and life insurance programs.

OPM has oversight responsibility for ensuring that personnel practices are carried out in accordance with the Merit System Principles. Through assessment of agency human resources management, OPM identifies violations of the principles and related laws, rules, and regulations. OPM also administers the government's classification appeals and Fair Labor Standards Act programs.

OPM also improves operations by helping agencies work effectively with federal labor organizations that represent 1.1 million federal employees. OPM regularly consults at the national level with labor organizations, agency managers and labor relations officials in the development of human resource policy and on government rules, regulations, and binding directives affecting conditions of employment.

Merit Systems Protection Board

The U. S. Merit Systems Protection Board is an independent, quasi-judicial agency in the Executive branch that serves as the guardian of Federal merit systems. The Board was established by Reorganization Plan No. 2 of 1978, which was codified by the Civil Service Reform Act of 1978 (CSRA), Public Law No. 95-454. The CSRA, which became effective January 11, 1979, replaced the Civil Service Commission with three new independent agencies: the Office of Personnel Management, which manages the Federal work force; the Federal Labor Relations Authority, which oversees Federal labor-management relations; and the Board.

The Board assumed the employee appeals function of the Civil Service Commission and was given the new responsibilities to perform merit systems studies and to review the significant actions of OPM. The CSRA also created the Office of Special Counsel, which investigates allegations of prohibited

personnel practices, prosecutes violators of civil service rules and regulations, and enforces the Hatch Act. Although established as an office of the Board, the Special Counsel has functioned independently as a prosecutor of cases before the Board. In July 1989, the Office of Special Counsel became an independent Executive branch agency.

The Board's mission is to ensure that Federal employees are protected against abuses by agency management, that Executive Branch agencies make employment decisions in accordance with the merit systems principles, and that Federal merit systems are kept free of prohibited personnel practices. The Board accomplishes its mission by:

- Hearing and deciding employee appeals from agency personnel actions (appellate jurisdiction);
- Hearing and deciding cases brought by the Special Counsel involving alleged abuses of the merit systems, and other cases arising under the Board's original jurisdiction;
- Conducting studies of the civil service and other merit systems in the Executive Branch to determine whether they are free of prohibited personnel practices; and
- Providing oversight of the significant actions and regulations of the Office of Personnel Management (OPM) to determine whether they are in accord with the merit system principles and free of prohibited personnel practices.

The Board does not:

- Hear and decide discrimination complaints except when allegations of discrimination are raised in appeals from agency personnel actions brought before Board. That responsibility belongs to the Equal Employment Opportunity Commission (EEOC);
- Resolve negotiability disputes, unfair labor practice complaints, and exceptions to arbitration awards. That responsibility belongs to the Federal Labor Relations Authority (FLRA);
- Provide advice on employment, examinations, staffing, retirement and benefits. That responsibility belongs to the Office of Personnel Management (OPM);
- Investigate allegations of activities prohibited by civil service laws, rules, or regulations. That responsibility belongs to the Office of Special Counsel (OSC).

MSPB also does not accept appeals from private industry, local, city, county or state employees.

Appellate Jurisdiction

The Civil Service Reform Act (CSRA) authorized the Board to hear appeals of various agency actions. If a personnel action involves a prohibited personnel practice, regardless of whether the action is appealable to the Board, the employee may file a complaint with the Special Counsel, asking that the Special Counsel seek corrective action from the Board. Under the Whistleblower Protection Act of 1989, an individual who alleges that a personnel action was taken, or not taken, or threatened, because of "whistleblowing" may seek corrective action from the Board directly if the Special Counsel does not seek corrective action on his or her behalf.

Most of the cases brought to the Board are appeals of agency adverse actions (removals, suspensions of more than 14 days, reductions in grade or pay, and furloughs of 30 days or less). The next largest number of cases involves appeals of OPM determinations in retirement matters. Other types of actions that may be appealed to the Board include: performance-based removals or reductions in grade, denials of within-grade salary increases, reduction-in-force actions, OPM suitability determinations, OPM employment practices (the development and use of examinations, qualification standards, tests and other measurement instruments), denials of restoration of reemployment rights, and certain terminations of probationary employees.

Additional jurisdictional issues arise where the employee alleges discrimination in connection with an action otherwise appealable to the Board (called a "mixed case"). While the Board has jurisdiction over such appeals, the employee, if dissatisfied with the final decision of the Board, may ask the Equal Employment Opportunity Commission (EEOC) to review the Board's decision. If the EEOC and the Board cannot agree, the case is referred to the Special Panel for final resolution. (The Special Panel consists of a Chairman appointed by the President, one member of the Board appointed by the MSPB Chairman, and one EEOC commissioner appointed by the EEOC Chairman.) A discrimination complaint in connection with an action that is not appealable to the Board may be pursued through internal agency procedures and the EEOC.

There are also additional jurisdictional issues when the employee is a member of a bargaining unit that has a negotiated grievance procedure covering any of the actions that may be appealed to the Board. In such instances, the employee normally must pursue a grievance through the negotiated grievance procedure. There are three exceptions to this general rule: (1) when the action is an adverse action or performance-based action; (2) when the employee raises an issue of prohibited discrimination in connection with the action; and (3) when the employee alleges that the action was the result of a prohibited personnel practice other than discrimination. If any of these exceptions apply, the employee has the choice of using the negotiated grievance procedure or filing an appeal with the Board, but may not do both. (Under the terms of some union contracts, Postal Service employees may be able to pursue a grievance under the negotiated procedure and also file an appeal with the Board.)

The Board also hears complaints of alleged violations of the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans Employment Opportunities Act (VEOA), and complaints from White House employees of alleged violations of civil rights and employment laws under the Presidential and Executive Office Accountability Act.

Probationary employees have very limited appeal rights. They may appeal a termination based on political affiliation or marital status, and they may appeal a termination based on conditions arising before employment on the grounds that the termination was not in accordance with regulations. Employees and annuitants may appeal OPM decisions affecting entitlements under the retirement systems. Certain actions, such as OPM suitability determinations and OPM employment practices, may be appealed by applicants for employment.

An appellant files an appeal with the appropriate MSPB regional or field office having geographical jurisdiction. An administrative judge issues an initial decision. Unless a party files a petition for review with the Board, the initial decision becomes final 35 days after issuance. Any party, or OPM or the Special Counsel, may petition the full Board in Washington, D.C. to review the initial decision. The Board's decision on petition for review is final and constitutes final administrative action.

Judicial Review

In appellate cases, the Board's final decision, whether it is an initial decision or Board decision, may be appealed to the United States Court of Appeals for the Federal Circuit or, in cases involving allegations of discrimination, to a U. S. district court. The Director of OPM may petition the Board for reconsideration of a final decision, and may also seek judicial review of Board decisions that have substantial impact on a civil service law, rule, regulation, or policy.

The Board's decisions in cases brought by the Special Counsel may be appealed to the U. S. Court of Appeals for the Federal Circuit, except in Hatch Act cases involving state or local government

employees. State or local government employees affected by the Board's Hatch Act decisions may file appeals in the U. S. district courts. The Board's decisions in other original jurisdiction cases may be appealed to the U. S. Court of Appeals for the Federal Circuit.

Members of the MSPB

The bipartisan Board consists of a Chairman, a Vice Chairman, and a Member, with no more than two of its three members from the same political party. Board members are appointed by the President and confirmed by the Senate. They serve overlapping, nonrenewable 7-year terms.

Prohibited Personnel Practices

The CSRA also set forth prohibited personnel practices that, when engaged in, are a basis for disciplinary action against responsible agency officials. An employee who appeals a personnel action to the Board may raise the affirmative defense that the action resulted from a prohibited personnel practice. Summarized, the prohibited personnel practices are:

- Discriminating on the basis of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation;
- Soliciting or considering statements concerning a person who is being considered for a personnel action unless the statement is based on personal knowledge and concerns the person's qualifications and character;
- Coercing the political activity of any person, or taking any action as a reprisal for a person's refusal to engage in political activity;
- Deceiving or willfully obstructing anyone from competing for employment;
- Influencing anyone to withdraw from competition for any position to help or hurt anyone else's employment prospects;
- Giving unauthorized preferential treatment to any employee or applicant;
- Nepotism;
- Taking or failing to take, or threatening to take or fail to take, a personnel action because of an individual's legal disclosure of information evidencing wrongdoing ("whistleblowing");
- Taking or failing to take, or threatening to take or fail to take, a personnel action because of an individual's exercising any appeal, complaint, or grievance right; testifying or lawfully assisting any individual in the exercise of any appeal, complaint, or grievance right; cooperating with or disclosing information to an agency Inspector General or the Special Counsel, or refusing to obey an order that would require the individual to violate a law;
- Discriminating on the basis of personal conduct that does not adversely affect the performance of an employee or applicant or the performance of others, except that an employee or applicant's conviction of a crime may be taken into account in determining suitability or fitness; and
- Taking or failing to take any other personnel action if the act or omission would violate any law, rule, or regulation implementing or directly concerning the merit system principles.

There is an additional prohibited personnel practice for purposes of disciplinary action only. It is violating a veterans' preference provision in connection with a personnel action.

Equal Employment Opportunity Commission

The Equal Employment Opportunity Commission (EEOC) was created by Title VII of the Civil Rights Act of 1964. EEOC began operations officially on July 2, 1965, one year after passage of the Act. With

headquarters in Washington, D.C., and 50 field offices nationwide, EEOC is the federal government's premier civil rights agency.

Federal Laws Prohibiting Job Discrimination

The following federal laws prohibit discrimination on the job:

- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;
- the Equal Pay Act of 1963, which prohibits discrimination on the basis of gender in compensation for substantially similar work under similar conditions;
- the Age Discrimination in Employment Act of 1967 (ADEA), which prohibits discrimination against individuals who are 40 years of age and older;
- Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), which prohibit employment discrimination on the basis of disability in the private sector, and in state and local governments;
- Sections 501 and 505 of the Rehabilitation Act of 1973, which prohibit employment discrimination against federal employees with disabilities; and
- the Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination.

The EEOC enforces all of these laws. The EEOC also provides oversight and coordination of all federal equal employment opportunity regulations, practices, and policies.

Other federal laws, not enforced by EEOC, also prohibit discrimination and reprisal against federal employees and applicants. The Civil Service Reform Act of 1978 (CSRA) contains a number of prohibitions, known as prohibited personnel practices, which are designed to promote overall fairness in federal personnel actions. The CSRA prohibits any employee who has authority to take certain personnel actions from discriminating for or against employees or applicants for employment on the bases of race, color, national origin, religion, sex, age or disability. It also provides that certain personnel actions cannot be based on attributes or conduct that do not adversely affect employee performance, such as marital status and political affiliation. OPM has interpreted the prohibition of discrimination based on conduct to include discrimination based on sexual orientation. The CSRA also prohibits reprisal against federal employees or applicants for whistle-blowing, or for exercising an appeal, complaint, or grievance right. The CSRA is enforced by both the Office of Special Counsel (OSC) and the Merit Systems Protection Board (MSPB).

Discriminatory Practices Prohibited By These Laws

Under Title VII, the ADA, and the ADEA, it is illegal to discriminate in any aspect of employment, including:

- hiring and firing;
- compensation, assignment, or classification of employees;
- transfer, promotion, layoff, or recall;
- job advertisements;
- recruitment;
- testing;
- use of company facilities;
- training and apprenticeship programs;
- fringe benefits;
- pay, retirement plans, and disability leave; or

- other terms and conditions of employment.

Discriminatory practices under these laws also include:

- harassment on the basis of race, color, religion, sex, national origin, disability, or age;
- retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
- employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals with disabilities; and
- denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability. Title VII also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group.

Other Discriminatory Practices Under These Laws

Title VII
Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex.

National Origin Discrimination
It is illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group.

A rule requiring that employees speak only English on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting business. If the employer believes such a rule is necessary, employees must be informed when English is required and the consequences for violating the rule.

Religious Accommodation
An employer is required to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship on the employer.

Sex Discrimination
Title VII's broad prohibitions against sex discrimination specifically cover:

Sexual Harassment - This includes practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same sex harassment. (The "hostile environment" standard also applies to harassment on the bases of race, color, national origin, religion, age, and disability.)

Pregnancy Based Discrimination - Pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions. Note that additional rights are available to parents and others under the Family and Medical Leave Act (FMLA).

Age Discrimination in Employment Act (ADEA)
The ADEA's broad ban against age discrimination also specifically prohibits:

- statements or specifications in job notices or advertisements of age preference and limitations. An age limit may only be specified in the rare circumstance where age has been proven to be a bona fide occupational qualification (BFOQ);
- discrimination on the basis of age by apprenticeship programs, including joint labor-management apprenticeship programs; and
- denial of benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

Equal Pay Act (EPA)
The EPA prohibits discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions. Note that employers may not reduce wages of either sex to equalize pay between men and women. A violation of the EPA may occur where a different wage was/is paid to a person who worked in the same job before or after an employee of the opposite sex.

Rehabilitation Act of 1973
The Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in all employment practices. It closely follows the better-known Americans with Disabilities Act. It is necessary to understand several important definitions to know who is protected by the law and what constitutes illegal discrimination:

Individual with a Disability
An individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities are activities that an average person can perform with little or no difficulty such as walking, breathing, seeing, hearing, speaking, learning, and working.

Qualified Individual with a Disability
A qualified employee or applicant with a disability is someone who satisfies skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position.

Reasonable Accommodation
Reasonable accommodation may include, but is not limited to, making existing facilities used by employees readily accessible to and usable by persons with disabilities; job restructuring; modification of work schedules; providing additional unpaid leave; reassignment to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters. Reasonable accommodation may be necessary to apply for a job, to perform job functions, or to enjoy the benefits and privileges of employment that are enjoyed by people without disabilities. An employer is not required to lower production standards to make an accommodation. An employer generally is not obligated to provide personal use items such as eyeglasses or hearing aids.

Undue Hardship
An employer is required to make a reasonable accommodation to a qualified individual with a disability unless doing so would impose an "undue hardship" on the operation of the employer's business. "Undue hardship" means an action that requires significant difficulty or expense when

considered in relation to factors such as financial resources, and the size, nature and structure of its operation.

Prohibited Inquiries and Examinations
Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in the same job category. Medical examinations of employees must be job-related and consistent with business necessity.

Drug and Alcohol Use
Employees and applicants currently engaging in the illegal use of drugs are not protected by the Rehabilitation Act when an employer acts on the basis of such use. Tests for illegal use of drugs are not considered medical examinations and, therefore, are not subject to restrictions on medical examinations. Employers may hold individuals who are illegally using drugs and individuals with alcoholism to the same standards of performance as other employees.

The Civil Rights Act of 1991
The Civil Rights Act of 1991 made major changes in the federal laws against employment discrimination enforced by EEOC. Enacted in part to reverse several Supreme Court decisions that limited the rights of persons protected by these laws, the Act also provides additional protections. The Act authorizes compensatory damages, and provides for obtaining attorneys' fees and the possibility of jury trials.

The CSRA (not enforced by EEOC) covers most federal agency employees except employees of a government corporation, the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and as determined by the President, any executive agency or unit thereof, the principal function of which is the conduct of foreign intelligence or counterintelligence activities, or the General Accounting Office.

Filing and Processing Federal EEO Complaints

As stated above, the statutes enforced by EEOC make it illegal to discriminate against employees or applicants for employment on the bases of race, color, religion, sex, national origin, disability, or age. A person who files a complaint or participates in an investigation of an EEO complaint, or who opposes an employment practice made illegal under any of the statutes enforced by EEOC, is protected from retaliation.

In addition to the laws that EEOC enforces, there are federal protections from discrimination on other bases including sexual orientation, status as a parent, marital status, political affiliation, and conduct that does not adversely affect the performance of the employee.

Filing A Complaint
Employees or applicants who believe that they have been discriminated against by a federal agency have the right to file a complaint with that agency. The first step is to contact an EEO Counselor at the agency within 45 days of the discriminatory action. The individual may choose to participate in either counseling, or in Alternative Dispute Resolution (ADR) when the agency offers ADR. Ordinarily,

counseling must be completed within 30 days and ADR within 90 days. At the end of counseling, or if ADR is unsuccessful, the individual may then file a complaint with the agency.

The agency must investigate the complaint, unless the complaint is dismissed. If a complaint is one containing one or more issues that must be appealed to the Merit Systems Protection Board (MSPB), the complaint is a "mixed case." It is then processed under the Board's procedures. For all other EEO complaints, once the agency finishes its investigation, the complainant may request a hearing before an EEOC administrative judge or an immediate final decision from the agency. If the complainant is not satisfied with the final agency decision, he or she can then take the case to federal district court.

In cases where an EEOC hearing is requested, the administrative judge conducts a hearing, issues a decision within 180 days, and sends the decision to both parties. Where discrimination is found, the administrative judge orders appropriate relief. If the agency does not issue a final order within 40 days after receiving the administrative judge's decision, the decision becomes the final action of the agency. If the agency issues an order notifying the complainant that the agency will not fully implement the decision of the administrative judge, the agency also must file an appeal at the same time.

An individual, acting as a class agent, also may file a class complaint with an agency. Class complaints must be certified by an EEOC administrative judge in order to be accepted for processing.

Appealing To The EEOC

A dissatisfied complainant may appeal to EEOC an agency's final action within 30 days of receipt. The agency may appeal a decision by an EEOC administrative judge within 40 days of receiving the administrative judge's decision.

On class complaints, a class agent may appeal an agency's final decision on the merits of the class complaint within 30 days from receipt, or a class member may appeal the final decision on his or her claim for individual relief within 30 days from receipt of the final decision.

If the complaint is a "mixed case," the complainant may appeal the final agency decision to the MSPB or ask the Board for a hearing. Once the Board issues its decision on the complaint, the complainant may petition EEOC for review of the Board decision concerning the claim(s) of discrimination.

Remedies

EEOC's policy is to seek full and effective relief for each and every victim of discrimination. The remedies may include:

- corrective or preventive actions taken to cure or correct the source of the identified discrimination;
- nondiscriminatory placement in the position the victim would have occupied if the discrimination had not occurred;
- compensatory damages up to $300,000;
- reimbursement of attorneys' fees;
- back pay (with interest if applicable) and lost benefits; and
- stopping the specific discriminatory practices involved.

To obtain additional information, go to EEOC's web site at http://www.eeoc.gov.

Office of Government Ethics

The Office of Government Ethics (OGE), a small agency within the executive branch, was established by the Ethics in Government Act of 1978. Its job is to exercise leadership in the executive branch to prevent conflicts of interest on the part of Government employees, and to resolve any conflicts of interest that do occur. In partnership with executive branch agencies and departments, OGE seeks to foster high ethical standards for employees and strengthen the public's confidence that the Government's business is conducted with impartiality and integrity.

Executive branch employees hold their positions as a public trust and American citizens have a right to expect that all employees will place loyalty to the Constitution, laws and ethical principles above private gain. Employees fulfill that trust by adhering to general principles of ethical conduct as well as specific ethical standards.

Executive Order 12674 issued by President Bush in 1989 and modified in 1990 by Executive Order 12731 states 14 general principles that broadly define the obligations of public service. Underlying these 14 principles are two core concepts -

(1) Employees shall not use public office for private gain; and
(2) Employees shall act impartially and not give preferential treatment to any private organization or individual.

In addition, employees must strive to avoid any action that would create the appearance that they are violating the law or ethical standards. By observing these general principles, employees help to ensure that citizens have complete confidence in the integrity of Government operations and programs.

Gifts From Outside Sources

Executive branch employees are subject to restrictions on the gifts that they may accept from sources outside the Government. Generally they may not accept gifts that are given because of their official position or that come from certain interested sources ("prohibited sources"). Those sources include persons (or an organization made up of such persons) who –

- are seeking official action by the employee's agency;
- are doing or seeking to do business with the employee's agency;
- are regulated by the employee's agency; or
- have interests that may be substantially affected by performance or nonperformance of the employee's official duties.

There are a number of exceptions to the ban on gifts from outside sources. These exceptions would allow the acceptance of gifts in the following circumstances –

- where the value of the gift is $20 or less;
- where the gift is based solely on a family relationship or personal friendship;
- where the gift is based on an outside business or employment relationship; or
- where the gift is in connection with certain political activities.

Employees may accept gifts of free attendance at certain widely attended gatherings provided that there has been a determination that attendance is in the interest of the agency. Invitations from non-sponsors of the event may be accepted provided that certain additional conditions are met. There are also exceptions for discounts, awards and honorary degrees, certain social events, and meals, refreshments and entertainment in foreign countries.

These exceptions are subject to some limitations on their use. For example, an employee can never solicit or coerce the offering of a gift. Nor can an employee use exceptions to accept gifts on such a frequent basis that a reasonable person would believe that the employee was using public office for private gain.

Some other things are not treated as gifts and may be accepted without any limitations. Modest refreshments (such as coffee and doughnuts), greeting cards, plaques and other items of little intrinsic value, rewards and prizes open to the general public, and pension benefits from a former employer are just a few examples.

If an employee has received a gift that cannot be accepted, the employee may return the gift or pay its market value. If the gift is perishable and it is not practical to return it, the gift may, with approval, be given to charity or shared in the office.

Gifts Between Employees

Executive branch employees may not make a gift to an official superior, nor can an employee accept a gift from another employee who receives less pay except in certain circumstances or on certain occasions.

On an occasional basis, including occasions when gifts are traditionally given or exchanged, the following individual gifts to a supervisor are permitted –

- gifts other than cash that are valued at no more than $10;
- food and refreshments shared in the office among employees;
- personal hospitality in the employee's home that is the same as that customarily provided to personal friends;
- gifts given in connection with the receipt of personal hospitality that is customary to the occasion; and
- transferred leave provided that it is not to an immediate superior.

On certain special, infrequent occasions a gift may be given that is appropriate to that occasion. These occasions include –

- events of personal significance such as marriage, illness, or the birth or adoption of a child, or
- occasions that terminate the subordinate-official superior relationship such as retirement, resignation or transfer.

Employees may solicit or contribute, on a strictly voluntary basis, nominal amounts for a group gift to an official superior on special infrequent occasions, and occasionally for items such as food and refreshments to be shared among employees at the office.

Conflicting Financial Interests

Executive branch employees are prohibited by a Federal criminal statute from participating personally and substantially in a particular matter that will affect certain financial interests. Those include the financial interests of -

- the employee
- the employee's spouse or minor child
- the employee's general partner
- an organization in which the employee serves as an officer, director, trustee, general partner or employee, and

- a person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

There are a number of ways in which an employee may deal with a potential conflict of interest. The employee may simply not participate in the matter that would pose the conflict. This is called "recusal." The employee may also obtain a waiver from the agency, sell off or "divest" the conflicting interest, or resign from the conflicting position. Which remedy is appropriate will depend upon the particular circumstances.

Agencies may, by supplemental regulation, prohibit or restrict the holding of certain financial interests by all agency employees or a group of employees, and a few extend such restrictions to the employee's spouse and minor children.

Impartiality in Performing Official Duties

Executive branch employees are required to consider whether their impartiality may be questioned whenever their involvement in a particular matter involving specific parties might affect certain personal and business relationships. A pending case, contract, grant, permit, license or loan are some examples of particular matters involving specific parties. A general rulemaking, on the other hand, is not.

If such a matter would have an effect on the financial interest of a member of the employee's household, or if a person with whom the employee has a "covered relationship" is or represents a party to such a matter, then the employee must consider whether a reasonable person would question the employee's impartiality in the matter. If the employee concludes that there would be an appearance problem, then the employee should not participate in the matter unless authorized by the agency.

An employee has a "covered relationship" with the following persons –

- a person with whom the employee has or seeks a business, contractual or other financial relationship;
- a person who is a member of the employee's household or with whom the employee has a close personal relationship;
- a person for whom the employee's spouse, parent or dependent child serves as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
- any person for whom the employee has within the last year served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or
- any organization in which the employee is an active participant.

An employee may have a concern that circumstances other than those expressly described in the regulation may raise a question regarding the employee's impartiality. In such a situation, the employee should follow the procedures described in the regulation to determine whether or not participation in the particular matter would be appropriate. In addition, any employee who is unsure of whether a particular situation poses an ethics violation can always contact their agency's Designated Agency Ethics Official (DAEO) to obtain an informed opinion.

Some persons who enter Government service may receive a special severance payment or other benefit that their former employer does not make to other departing employees not entering into Federal service. If such a payment made prior to entering Government service is in excess of $10,000 and if certain other factors are present, then the employee is disqualified for two years from participating in

any particular matter in which the former employer is a party or represents a party. The agency may waive or shorten the disqualification period.

Seeking Other Employment

An executive branch employee may not participate in any particular Government matter that will affect the financial interests of a person or entity with whom he is seeking employment. An employee is considered to be seeking employment if -

- the employee is engaged in actual negotiations for employment;
- a potential employer has contacted the employee about possible employment and the employee makes a response other than rejection; and
- the employee has contacted a prospective employer about possible employment (unless the sole purpose of the contact is to request a job application or if the person contacted is affected by the performance of the employee's duties only as part of an industry).

An employee is considered no longer seeking employment if -

- either the employee or the prospective employer rejects the possibility of employment and all discussions of possible employment have ended; or
- two months have elapsed since the employee's dispatch of an unsolicited resume and the employee has received no expression of interest from the prospective employer.

In some cases, you may be authorized by an agency official to participate in particular matters from which you would otherwise have to be disqualified due to your job search. If a search firm or other intermediary is involved, the employee is not disqualified unless the intermediary identifies the prospective employer to the employee.

Misuse of Position

Executive branch employees must not use their public office for their own or another's private gain. Employees are not to use their position, title, or any authority associated with their office to coerce or induce a benefit for themselves or others. Employees also are not to use or allow the improper use of nonpublic information to further a private interest, either their own or another's. Employees may not use Government property for other than authorized purposes. Government property includes office supplies, telephones, computers, copiers and any other property purchased with Government funds. Employees may not misuse official time. This includes the employee's own time as well as the time of a subordinate.

Outside Activities

Executive branch employees are subject to a number of limitations on the outside activities in which they may be involved. An employee may not have outside employment or be involved in an outside activity that conflicts with the official duties of the employee's position. An activity conflicts with official duties –

- if it is prohibited by statute or by the regulations of the employee's agency; or
- if the activity would require the employee to be disqualified from matters so central to the performance of the employee's official duties as to materially impair the employee's ability to carry out those duties.

Employees of some agencies may be required by their agency's own supplemental conduct regulations to obtain prior approval before engaging in certain outside employment or activities.

Employees generally may not be paid for outside teaching, speaking and writing if the activity relates to the employee's official duties. However, there is an exception that would allow an employee to be paid for teaching certain courses at accredited educational institutions. Employees may not use their official title or position (except as part of a biography or for identification as the author of an article with an appropriate disclaimer) to promote a book, seminar, course, program or similar undertaking.

Employees may engage in fundraising in a personal capacity subject to several restrictions. An employee cannot solicit funds from subordinates. Nor may an employee solicit funds from persons who have interests that may be affected by the employee's agency, such as those who are regulated by, seeking official action from, or doing business with the agency. Also, an employee cannot use or permit the use of the employee's official title, position or authority to promote the fundraising effort.

Honoraria

Executive branch employees are no longer subject to the prohibitions on the acceptance of honoraria contained in the Ethics Reform Act of 1989. The 1989 Act had banned the receipt of any honoraria for an appearance, speech or article whether or not there was any connection to the employee's official duties. A later amendment to the 1989 Act had the effect of allowing payment for a series of such activities, provided that the activity did not relate to the employee's official duties.

This provision of the 1989 Act was challenged in court and eventually found by the Supreme Court to be an unconstitutional infringement of the First Amendment. Subsequently, the Department of Justice, in an opinion issued on February 26, 1996, determined that the law was "effectively eviscerated" by the Supreme Court's decision and that there were no remaining applications of the law.

The result is that executive branch employees generally may accept honoraria for an appearance, speech or article, provided that the activity does not relate to the employee's official duties. Any employee who had kept honoraria in an escrow account during the litigation is now free to receive those funds. Employees are still subject to other restrictions on the receipt of honoraria in certain circumstances, including the prohibition on receiving compensation for teaching, speaking and writing that relates to their official duties (subject to an exception for teaching certain courses).

Post-Employment

Executive branch employees are subject to certain restrictions on their activity after they leave Government service. Two of the restrictions apply with respect to particular matters involving specific parties that they were involved with while in Government service. If the employee's involvement in such a matter was personal and substantial, then the employee is permanently barred from representing anyone back to any Federal department, agency, or court on that same matter. If the matter was under the employee's official responsibility during the last year of Government service, then the employee is barred for two years after leaving Government service from representing anyone back to the Government on that same matter.

In addition, certain high level officials are subject to a so-called "one-year cooling off period." For a period of one year after leaving a "senior" position, these officials may not make any appearance on behalf of any person (other than the United States) before his former agency with the intent to influence the agency on any matter in which that person seeks official action.

Employees who participated personally and substantially in an ongoing trade or treaty negotiation and had access to certain information are subject to a one year restriction on representing, aiding or

advising anyone concerning that ongoing trade or treaty negotiation after they leave Government service.

Former very senior employees are subject to an additional restriction on the persons throughout the executive branch who may be contacted during the first year after they have left Government. Former senior and very senior employees are restricted for one year after leaving Government service from representing, aiding or advising foreign governments or foreign political parties before an agency or department of the United States.

Representation to Government Agencies and Courts

Executive branch employees are subject to criminal statutes that prohibit the representation of private interests before the Government. One of these laws prohibits an employee from prosecuting a claim against the United States or representing a private party before the Government in connection with a particular matter in which the United States is a party or has a direct and substantial interest. This prohibition applies whether or not the employee receives compensation for the representation.

There are exceptions that would allow an employee to represent with or without compensation -

- the employee (self-representation);
- a parent, spouse or child of the employee; or
- a person or estate that the employee serves as a guardian, executor, administrator, trustee or personal fiduciary.

The matter involved may not be one in which the employee participated personally and substantially or which was the subject of the employee's official responsibility. Also, the employee must obtain approval for the activity from the employee's appointing official.

An employee may represent employee nonprofit organizations (such as child care centers, recreational associations, professional organizations, credit unions or other similar groups) before the U.S. Government under certain circumstances. The employee may not be compensated. And the employee may not represent an employee group in claims against the Government, in seeking grants, contracts or cash from the Government, or in litigation where the group is a party.

An employee may take on uncompensated representation of a person who is the subject of disciplinary, loyalty, or personnel administration proceedings.

Another law governing representational activity prohibits an employee from accepting compensation for certain representational services before the Government whether or not those services were provided by the employee personally or by some other person. Again, there are exceptions to this law that would allow for the representation of a parent, spouse, child or person served in a fiduciary capacity.

Supplementation of Salary

Executive branch employees may not be paid by someone other than the United States for doing their Government job. Thus, for example, a highly paid executive of a corporation upon entering Government service could not accept an offer from her former employer to make up the difference between her Government salary and the compensation she received from her former employer.

This prohibition does not apply to -

- certain special Government employees and employees serving without compensation;
- funds contributed out of the treasury of any State, county, or municipality;
- continued participation in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer;
- payments for travel, subsistence and other expenses made to an employee by a tax-exempt nonprofit organization incurred in connection with training; and
- moving expenses incurred in connection with participation in an executive exchange or fellowship program in an executive agency.

Financial Disclosure

The Office of Government Ethics oversees the administration of the public and confidential financial disclosure systems for the executive branch. It also administers the blind trust and certificate of divestiture programs in the executive branch.

Public Financial Disclosure

Certain senior officers and employees of the executive branch are required to file a public report (SF 278) disclosing their financial interests as well as the interests of their spouse and minor children. Public filers must report -

- any interest in property held in a trade or business or for investment or the production of income (real estate, stocks, bonds, securities, futures contracts, beneficial interests in trusts or estates, pensions and annuities, mutual funds, etc.) that meet reporting thresholds;
- earned income, retirement benefits, honoraria and any other non-investment income;
- gifts and reimbursements that meet reporting thresholds;
- liabilities (personal loans from certain family members, a mortgage on a personal residence, automobile, furniture and appliance loans, revolving charge accounts that do not exceed $10,000 at the close of the reporting period are excluded from reporting);
- agreements or arrangements with respect to future employment, leaves of absence and continuation of payments or benefits from a former employer; and
- outside positions such as an officer, director, trustee, general partner, proprietor, employee, consultant, etc. of any organization (but positions with religious, social, fraternal or political entities are excluded, as are solely honorary positions).

Confidential Financial Disclosure

Certain other less senior executive branch employees whose duties involve the exercise of discretion in sensitive areas such as contracting, procurement, administration of grants and licenses, and regulating or auditing non-Federal entities are required to file confidential financial disclosure reports (OGE Form 450). This reporting system generally tracks the approach of the public disclosure system with some differences. Ranges of values of assets and income from assets are not required to be reported nor are interests in or income from bank accounts, money market mutual funds, U.S. obligations and Government securities. The most notable difference is that confidential reports are not available to the public.

Recusals

One remedy that is often appropriate for avoiding a potential conflict of interest is recusal or disqualification. This simply means that the employee does not participate in a matter that could affect the employee's financial interest.

Waivers

Another remedy for dealing with conflicts of interest is the use of waivers. An individual waiver of the statutory bar may be granted by an authorized official when the conflicting financial interest is not substantial. For example, an official might grant a waiver where the employee owned only a few shares of a particular stock. Waivers may also be granted to special Government employees serving on advisory committees. OGE is authorized to issue regulatory waivers for certain classes of financial interests and such a regulation was recently issued as a final rule. Finally, waivers are available for dealing with conflicts that arise from financial interests derived from Native American birthrights.

Certificates of Divestiture

Section 1043 of the Internal Revenue Code provides for the deferral of capital gains taxes on assets that must be sold to comply with ethics program requirements. Proceeds from divested assets must be reinvested in certain specified categories of investments. This change allows for a more flexible remedy to conflicts that avoid subjecting an executive branch employee to costly tax consequences that would otherwise result from the sale. In order to take advantage of the tax deferral mechanism, a Certificate of Divestiture must be obtained from OGE before the sale occurs. Certificates of Divestiture are issued by the Office of Government Ethics in accordance with its procedures and policies.

Trusts

Finally, a blind trust may be available as a remedy for a potential conflict of interest. In order to be recognized, the trust must include certain required provisions in the trust instrument and have an approved independent trustee. A blind trust must be approved by the Director of the Office of Government Ethics before it is executed.

There is no requirement that a person utilize a blind trust as a means of resolving potential conflicts of interest. Generally, a blind trust will be appropriate where the holdings are of such an array and magnitude that creation of a qualified trust would be the most practical means of avoiding conflicts.

Informal Advisory Letters and Memoranda and Formal Opinions

The Office of Government Ethics provides both informal advisory letters and memoranda and formal opinions concerning the application of the Ethics in Government Act of 1978 (including its financial disclosure provisions), the criminal conflict of interest laws, the administrative standards of ethical conduct and related Executive orders, and other administrative regulations issued by OGE. At the discretion of the Director, formal advisory opinions will be rendered on matters of general applicability or on important matters of first impression. Where a request does not meet the requirements for a formal advisory opinion, the Office of Government Ethics may respond by way of an informal advisory letter or memorandum.

The informal advisory letters and memoranda and formal opinions for the period 1979-1988 have been published in a bound volume by the Government Printing Office. Annual supplements to the bound volume have been published in a loose-leaf format and are current through calendar year 1998. These opinions are also available in the Advisory Opinions section of OGE's web site (http://www.usoge.gov).

Office of Special Counsel

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Its basic authorities come from three federal statutes - the Civil Service Reform Act, the Whistleblower Protection Act, and the Hatch Act. OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. A description of prohibited personnel practices (PPPs) is provided below. OSC is also responsible for protecting the reemployment rights of federal employee military veterans and reservists under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Prohibited Personnel Practices and Whistleblower Protection

OSC receives, investigates, and prosecutes allegations of PPPs, with an emphasis on protecting federal government whistleblowers. OSC seeks corrective action remedies (such as back pay and reinstatement), by negotiation or from the Merit Systems Protection Board (MSPB), for injuries suffered by whistleblowers and other complainants. OSC is also authorized to file complaints at the MSPB to seek disciplinary action against individuals who commit PPPs.

OSC provides a secure channel through its Disclosure Unit for federal workers to disclose information about various workplace improprieties, including a violation of law, rule or regulation, gross mismanagement and waste of funds, abuse of authority, or a substantial danger to public health or safety.

OSC promotes compliance by government employees with legal restrictions on political activity by providing advisory opinions on, and enforcing, the Hatch Act. Every year, OSC's Hatch Act Unit provides over a thousand advisory opinions, enabling individuals to determine whether their contemplated political activities are permitted under the Act. The Hatch Act Unit also enforces compliance with the Act. Depending on the severity of the violation, OSC will either issue a warning letter to the employee, or prosecute a violation before the MSPB.

Organization

The OSC is headed by the Special Counsel, who is appointed by the President, and confirmed by the Senate. The agency employs approximately 106 employees (primarily personnel management specialists, investigators and attorneys) to carry out its government-wide responsibilities. They work in the headquarters office in Washington, D.C., and in the Dallas, Texas, and San Francisco Bay Area field offices.

Twelve Prohibited Personnel Practices

Twelve prohibited personnel practices, including reprisal for whistleblowing, are defined by law at § 2302(b) of title 5 of the United States Code (U.S.C.). A personnel action (such as an appointment, promotion, reassignment, or suspension) may need to be involved for a prohibited personnel practice to occur. Generally stated, § 2302(b) provides that a federal employee authorized to take, direct others to take, recommend or approve any personnel action may not:

(1) discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
(2) solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;
(3) coerce the political activity of any person;
(4) deceive or willfully obstruct anyone from competing for employment;

(5) influence anyone to withdraw from competition for any position so as to improve or injure the employment prospects of any other person;
(6) give an unauthorized preference or advantage to anyone so as to improve or injure the employment prospects of any particular employee or applicant;
(7) engage in nepotism (i.e., hire, promote, or advocate the hiring or promotion of relatives);
(8) engage in reprisal for whistleblowing - i.e., take, fail to take, or threaten to take or fail to take a personnel action against an employee or applicant for disclosing to the Special Counsel, or to an Inspector General or comparable agency official (or others, except when disclosure is barred by law, or by Executive Order to avoid harm to the national defense or foreign affairs), information which the employee or applicant reasonably believes evidences a violation of any law, rule or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety;
(9) take, fail to take, or threaten to take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law;
(10) discriminate based on personal conduct which is not adverse to the on-the-job performance of an employee, applicant, or others; or
(11) take or fail to take, recommend, or approve a personnel action if taking or failing to take such an action would violate a veterans' preference requirement; and
(12) take or fail to take a personnel action, if taking or failing to take action would violate any law, rule or regulation implementing or directly concerning merit system principles at 5 U.S.C. § 2301.

Who Is Protected From Prohibited Personnel Practices

In general, OSC has jurisdiction over prohibited personnel practices committed against most employees or applicants for employment in Executive Branch agencies and the Government Printing Office.

In some instances, OSC's jurisdiction is more limited. OSC has jurisdiction over allegations of whistleblower retaliation for employees of -

- the government corporations listed at 31 U.S.C. § 9101;
- the Federal Aviation Administration;
- the Transportation Security Administration (TSA). (For personnel actions occurring on or after March 1, 2003, all TSA employees have full 5 U.S.C. § 2302(b)(8) whistleblower protections in addition to protections under sections (b)(1) and (b)(9); see below.)

In addition, OSC has limited jurisdiction over allegations of nepotism at the U.S. Postal Service (USPS). Under a Memorandum of Understanding (MOU) between OSC and USPS, OSC refers alleged violations of the anti-nepotism statute (5 U.S.C. § 3110) to USPS for investigation. Once USPS completes its investigation, it reports its findings and any proposed action to OSC.

Finally, for personnel actions that occur on or after March 1, 2003, all Transportation Security Administration (TSA) employees, including security screeners, may file prohibited personnel practice complaints with OSC under 5 U.S.C. §§ 2302(b)(1)[discrimination], (b)(8) [retaliation for protected whistleblowing] and (b)(9) [retaliation for engaging in protected activities]. OSC will process these complaints under its regular procedures, including filing petitions with the Merit Systems Protection

Board, if warranted.

With respect to security screener complaints alleging retaliatory personnel actions taken prior to March 1, 2003, the MOU between OSC and TSA executed on May 28, 2002, will remain in effect. Under the MOU, TSA security screeners may only file complaints alleging reprisal for whistleblowing with OSC. The MOU and TSA Directive HRM Letter No. 1800-01 provide the authority under which OSC may investigate whistleblower retaliation complaints and recommend that TSA take corrective and/or disciplinary action when warranted. Additional information on OSC procedures for reviewing security screener whistleblower complaints under the MOU is available at http://www.osc.gov/tsa-info.htm. These special procedures under the MOU, however, apply only to personnel actions occurring before March 1, 2003.

Who Is Not Protected From Prohibited Personnel Practices

OSC has no jurisdiction over prohibited personnel practices committed against employees of -

- the Central Intelligence Agency, Defense Intelligence Agency, National Security Agency, and certain other intelligence agencies excluded by the President;
- the General Accounting Office;
- the Federal Bureau of Investigation;
- the U.S. Postal Service (except for nepotism allegations; see above); and
- the Postal Rate Commission.

Complaint Processing

Complaints Examining Unit (CEU). The CEU receives complaints filed with the OSC. The unit initially analyzes all allegations of prohibited personnel practices (as well as allegations of other activities prohibited by civil service law, rule or regulation).

When necessary, the CEU contacts the person requesting OSC action to ensure that CEU clearly understands the nature of and basis for each allegation. It conducts further inquiry to the extent necessary to determine whether the allegation warrants additional investigation.

Persons who have submitted allegations to the CEU will receive one or more of the following responses:

- a letter acknowledging receipt of their complaint and identifying the staff member assigned to handle it, with an information sheet (Form OSC-53) enclosed explaining how the complaint will be processed by the CEU;
- a status report after 90 days, and every 60 days thereafter while the matter is active;
- a letter advising that the matter has been referred to an OSC Investigation and Prosecution Division for further inquiry, with an information sheet (Form OSC-54) about the investigation and legal review process (or, as noted below, a letter inviting the complainant to participate in mediation as an alternative to investigation);
- a preliminary determination letter, with a final opportunity for input when the CEU proposes to close a matter without remedial action or referral to an Investigation and Prosecution Division; or
- a letter advising that the OSC will take no further action because it lacks jurisdiction over the matter.

The OSC asks everyone who seeks an investigation of a possible prohibited personnel practice to select one of three consent statements (Form OSC-49) explaining necessary communications between OSC and the agency involved.

Investigation and Prosecution Division (IPD). After a thorough initial examination, the CEU refers matters indicating a potentially valid claim (under the laws enforced by the OSC) to one of three IPD units. Each unit conducts investigations to review pertinent records, and to interview complainants and witnesses with knowledge of the matters alleged. Matters not resolved during the investigative phase will undergo legal review and analysis to determine whether the IPD inquiry has established a violation of law, rule or regulation, and whether the matter warrants corrective action, disciplinary action, or both. Complainants will continue to receive 60-day status notices while matters are pending in the applicable division.

Alternative Dispute Resolution (ADR) Unit. After CEU has completed its examination, OSC offers mediation as an alternative to investigation in selected PPP cases. Participation in the OSC mediation program is completely voluntary for both the complainant and the employing agency. If both parties agree to mediate their dispute, the OSC assigns a neutral third party - a mediator - to facilitate a discussion between the parties to reach a mutually agreeable resolution to the complaint.

Delaying a Personnel Action Pending Investigation

An individual may request that the Special Counsel seek to delay, or "stay," an adverse personnel action pending an OSC investigation. If the Special Counsel has reasonable grounds to believe that the proposed action is the result of a prohibited personnel practice, the OSC may ask the agency involved to delay the personnel action. If the agency does not agree to a delay, the OSC may then ask the Merit Systems Protection Board (MSPB) to stay the action. (The OSC cannot stay a personnel action on its own authority.)

Remedying a Prohibited Personnel Practice

Current and former federal employees and applicants for federal employment may report suspected prohibited personnel practices to the OSC. The matter will be investigated, and if there is sufficient evidence to prove a violation, the OSC can seek corrective action, disciplinary action, or both. Alternatively, parties in selected cases may agree to mediate their dispute in order to reach a mutually agreeable resolution of the PPP complaint.

The OSC may enter into discussions with an agency at any stage of a pending matter in pursuit of a resolution acceptable to all parties. The OSC follows a policy of early and firm negotiation to obtain appropriate corrective action (and/or disciplinary action) for apparent violations.

If an agency fails to remedy a prohibited personnel practice upon request by the OSC, corrective action may also be obtained through litigation before the MSPB. Such litigation begins with the filing of a petition by the OSC, alleging that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is about to occur. Corrective actions that can be ordered by the MSPB include job restoration, reversal of suspensions and other adverse actions, reimbursement of attorney's fees, back pay, medical and other costs and damages.

Note: Current or former federal employees and applicants who allege that they were subjected to any personnel action because of whistleblowing may seek corrective action in an appeal to the MSPB.

Such an appeal is known as an "individual right of action" (IRA). By law, the employee or applicant must seek corrective action from the OSC before filing an IRA.

The IRA may be filed:

- after the OSC closes a matter in which reprisal for whistleblowing has been alleged; or
- if the OSC has not notified the complainant within 120 days of receiving an allegation of whistleblower reprisal that it will seek corrective action.

A federal employee or applicant for employment engages in whistleblowing when the individual discloses to the Special Counsel or an Inspector General or comparable agency official (or to others, except when disclosure is barred by law, or by Executive Order to avoid harm to the national defense or foreign affairs) information that the individual reasonably believes evidences the following types of wrongdoing:

- a violation of law, rule, or regulation; or
- gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Procedures for filing an IRA are set forth in MSPB regulations at 5 C.F.R. Part 1209. (In considering an IRA, it should be noted that the MSPB may refuse to take jurisdiction over any matters not specifically raised before the OSC.)

Disciplinary action. The OSC may seek disciplinary action against any employee believed to be responsible for committing a prohibited personnel practice. The OSC begins a disciplinary action case by filing a complaint with the MSPB, charging an employee with the commission of a prohibited personnel practice, and seeking disciplinary action against that person. Rights of employees against whom the OSC seeks disciplinary action in these cases are set forth in MSPB regulations, at 5 C.F.R. Part 1201, Subpart D. Individuals found by the MSPB to have committed a prohibited personnel practice are subject to removal, reduction in grade, debarment from federal employment for up to five years, suspension, reprimand, or fine of up to $1,000.

In the alternative, at any time during its investigation of a matter, the OSC may authorize the agency involved to take disciplinary action against an employee believed to be responsible for committing a prohibited personnel practice. By law, during any OSC investigation under title 5, an agency may not take disciplinary action against any employee for any alleged prohibited activity under investigation, or for any related activity, without approval from the OSC.
Intervention. The Special Counsel may intervene as a matter of right, or otherwise participate in most proceedings before the MSPB. The Special Counsel may not intervene in certain proceedings (individual rights of action brought under 5 U.S .C. §1221, or matters otherwise appealable to the MSPB under 5 U.S.C. § 7701) without the consent of the person initiating the proceeding.

Filing a Complaint With OSC

Those who wish to file a complaint with OSC must use Form OSC-11 (Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity) to submit allegations of prohibited personnel practices or other prohibited employment activity. Form OSC-11 may obtained from OSC's web site at http://www.osc.gov (see Forms and Publications). OSC will not process a complaint submitted in any format other than a completed Form OSC-11 (except for a complaint alleging only a Hatch Act violation). If a person uses any another format to file a complaint, the material received will

be returned to the filer with a blank Form OSC-11 to complete and return to the OSC. The complaint will be considered to be filed on the date on which the OSC receives the completed Form OSC-11.

Complaints of prohibited personnel practices or other prohibited employment activities within the investigative authority of the OSC should be sent to the U.S. Office of Special Counsel, Complaints Examining Unit, 1730 M Street, NW, Suite 201, Washington, DC 20036-4505.

Employees covered by a collective bargaining agreement must choose one of three avenues: an OSC complaint, an MSPB appeal, or a grievance under the collective bargaining agreement.

OSC's Policy About Allegations of Discrimination

The OSC is statutorily authorized to investigate allegations of discrimination based on race, color, religion, sex, national origin, age, or handicapping condition. However, procedures for investigating such complaints have already been established in federal agencies and the Equal Employment Opportunity Commission (EEOC). Therefore, to avoid duplicating those investigative processes, the OSC follows a general policy of deferring complaints involving discrimination to those agencies' procedures.

Allegations of discrimination based on sexual orientation, marital status, and political affiliation are not within the jurisdiction of the EEOC. Such allegations, however, may be prohibited personnel practices or other violations of law subject to investigation by the OSC.

Other Violations Over Which OSC Has Jurisdiction

The OSC is authorized by law to investigate and seek appropriate corrective and disciplinary action for:

- activities prohibited by any civil service law, rule, or regulation (including any activity relating to political intrusion in personnel decision making);
- arbitrary or capricious withholding of information under the Freedom of Information Act; and
- involvement by any employee in any prohibited discrimination found by a court or administrative authority to have occurred in the course of any personnel action.

The OSC also has authority to investigate and litigate cases referred by the Department of Labor involving the reemployment rights of veterans and reservists returning to the federal workplace after active duty, as explained in Chapter 7, "Rights of Military Personnel."

Cooperating With OSC Investigations

By law, OSC is authorized to issue subpoenas for documents or the attendance and testimony of witnesses. During an investigation, the OSC may require employees and others to testify under oath, sign written statements, or respond formally to written questions.

Federal employees are also required to provide to the OSC any information, testimony, documents, and material, the disclosure of which is not otherwise prohibited by law or regulation, in investigations of matters under civil service law, rule, or regulation. The same rule requires federal agencies to make employees available to testify, on official time, and to provide pertinent records to the OSC.

Whistleblower Disclosures

OSC's Disclosure Unit (DU) serves as a safe conduit for the receipt and evaluation of whistleblower disclosures from federal employees, former employees and applicants for federal employment. In this

capacity, DU receives and evaluates whistleblowing disclosures, which are separate and distinct from complaints of reprisal or retaliation for whistleblowing, which are reviewed by OSC's Complaints Examining Unit as a prohibited personnel practice.

The OSC disclosure process differs from other government whistleblower channels in at least three ways: (1) federal law guarantees confidentiality to the whistleblower; (2) the Special Counsel may order an agency head to investigate and report on the disclosure; and (3) after any such investigation, the Special Counsel must send the agency's report, with the whistleblower's comments, to the President and Congressional oversight committees.

As stated above, a whistleblower's identity will not be revealed without their consent. However, in the unusual case where the Special Counsel determines there is an imminent danger to public health and safety or violation of criminal, the Special Counsel has the authority to reveal the whistleblower's identity.

DU attorneys review five types of disclosures specified in the statute: violations of law, rule or regulation; gross mismanagement; gross waste of funds; abuse of authority; and substantial and specific danger to public health and safety. The disclosures are evaluated to determine whether or not there is sufficient information to conclude with a substantial likelihood that one of these conditions has been disclosed.

Jurisdictional Requirements

The Disclosure Unit has jurisdiction over federal employees, former federal employees, and applicants for federal employment. It is important to note that a disclosure must be related to an event that occurred in connection with the performance of an employee's duties and responsibilities.

The Disclosure Unit does not have jurisdiction over disclosures filed by:

- employees of the U.S. Postal Service and the Postal Rate Commission;
- members of the armed forces of the United States (i.e., non-civilian military employees);
- state employees operating under federal grants;
- employees of federal contractors; and employees paid through non-appropriated funds.

Filing a Disclosure

Whistleblowers must make their disclosures to OSC in writing. To facilitate this process, OSC has developed a form that may be used to file a disclosure - OSC Form No. 12, Disclosure of Information. Use of OSC Form No. 12 is not mandatory. However, if you do not use the form, it is important to include your name, address and telephone numbers. For assistance with filing a disclosure, or any other inquiries, contact the DU Hotline at (800) 572-2249 or (202) 653-9125.

Evaluating Disclosures

DU attorneys evaluate the disclosures to determine whether or not there is a substantial likelihood that one of the following conditions has been disclosed: a violation of law, rule or regulation, gross mismanagement, gross waste of funds, an abuse of authority, and a substantial and specific danger to public health and safety. Disclosures are reviewed in the order they are received with disclosures of dangers to public health and safety receiving high priority.

OSC will generally not consider anonymous disclosures. If a disclosure is filed by an anonymous source, the disclosure will be referred to the Office of Inspector General in the appropriate agency. OSC will take no further action on the disclosure.

OSC does not have authority to investigate the disclosures that it receives. In order to make a "substantial likelihood" finding, OSC considers a number of factors including whether the disclosure includes reliable, first-hand information. In general, OSC does not request an agency head to conduct an investigation based on the whistleblower's second-hand knowledge of agency wrongdoing. Individuals with first-hand knowledge of the allegations are encouraged to file disclosures in writing directly with OSC.

Similarly, speculation about the existence of misconduct does not provide OSC with a sufficient legal basis upon which to send a matter to the head of an agency. If a whistleblower believes that wrongdoing took place, but can provide no information to support that assertion, OSC will not be able to refer the allegations to the head of the agency for an investigation.

If OSC finds no substantial likelihood that the information discloses one or more of the categories of wrongdoing, the whistleblower is notified of the reasons the disclosure may not be acted on further and directed to other offices available for receiving disclosures.

The Referral Process under 5 U.S.C. § 1213(c)
Should OSC find that there is a substantial likelihood that one of the statutory conditions exists, the Special Counsel will refer the disclosure to the appropriate agency head. The head of the agency is then required to conduct an investigation and submit a written report on the findings of the investigation to the Special Counsel.

The statute sets forth specific information that must be included in the agency's report.
The agency reports must be reviewed and signed by the head of the agency and must include the basis for the investigation, the manner in which the investigation was conducted and a summary of the evidence gathered. The report must also list any apparent violations found and include a description of any action to be taken as a result of the investigation. OSC does not decide who within the agency will conduct the investigation. However, agency heads frequently task their Offices of Inspector General with the responsibility for investigating the disclosures referred by OSC.

The statute requires agency heads to complete the investigation and report back to OSC on their findings within 60 days. If an agency needs additional time to complete the investigation and report, an extension of time may be requested. Extension requests must be submitted in writing and must state specifically the reasons the additional time is needed. Extensions will only be granted upon a showing of good cause.

Upon receipt, the agency's report is reviewed to determine whether it contains the information required by the statute and whether or not the report's findings appear to be reasonable. In addition, the whistleblower is afforded an opportunity to review and comment on the agency report. If the report meets the statutory requirements, the Special Counsel then transmits the report with comments and recommendations to the President and the congressional committees with oversight responsibility for the agency involved. OSC is also required to place the report in a public file. The whistleblower's comments are also sent to the President and congressional oversight committees.

If the report reveals evidence of a criminal violation it will not be sent to the whistleblower, nor does it become part of the public file. Instead, the agency is required to forward the information directly to the Attorney General and to notify the Office of Personnel Management and the Office of Management and Budget of the referral.

The Referral Process under 5 U.S.C. § 1213(g)
The Special Counsel may also refer cases to the head of an agency where no substantial likelihood determination has been made. In these cases, the Special Counsel has the discretion to transmit the information provided by the whistleblower to the head of the agency identified in the disclosure. The agency head is then required to inform OSC in writing, within a reasonable time, what action has been or will be taken, and when such action will be completed. The whistleblower is also informed of the referral to the agency head.

OSC may use this discretionary authority in circumstances where the Special Counsel concludes that the information provided by the whistleblower merits the consideration of the agency head, even though it does not meet the statutory criteria for a mandatory investigation under 5 U.S.C. § 1213(c). Thus, this section allows the Special Counsel to issue a formal communication to the head of an agency notifying that agency of a matter of concern within one or more of the five statutory categories.

Section 1213(g)(2) differs significantly from 1213(c). Under 1213(g)(2) there is no requirement for the agency to investigate the allegations nor is the agency required to respond in 60 days. However, the agency is required to inform the Special Counsel in writing within a reasonable amount of time of what action has been taken or is being taken and when the action will be completed. At present, the Special Counsel has interpreted the statutory phrase "reasonable time" to mean 90 days. Thereafter, the agency is required to request extensions of time as in 1213(c) cases.

The Referral Process under 5 U.S.C. § 1213(j)
For disclosures of information involving counterintelligence and foreign intelligence information the statute sets forth a different procedure under 5 U.S.C. § 1213(j). If the Special Counsel determines that a disclosure involves counterintelligence or foreign intelligence information, which is prohibited from disclosure by law or Executive order, the disclosure will be transmitted to the National Security Advisor, the Permanent Select Committee on Intelligence in the House and Select Committee on Intelligence in the Senate. The referral ends the Special Counsel's involvement with the disclosure and the National Security Advisor and the Congressional intelligence committees decide how to proceed with the information. The disclosure will not be referred to the head of the agency involved for an investigation.

Political Activity (Hatch Act)
The Hatch Act restricts the political activity of executive branch employees of the federal government, District of Columbia government and some state and local employees who work in connection with federally funded programs. In 1993, Congress passed legislation that significantly amended the Hatch Act as it applies to federal and D.C. employees (5 U.S.C. §§ 7321-7326). (These amendments did not change the provisions that apply to state and local employees. 5 U.S.C. §§ 1501- 1508.) Under the amendments most federal and D.C. employees are now permitted to take an active part in political management and political campaigns. A small group of federal employees are subject to greater restrictions and continue to be prohibited from engaging in partisan political management and partisan

political campaigns.

Permitted/Prohibited Activities for Employees Who May Participate in Partisan Political Activity

These federal and D.C. employees *may*-

- be candidates for public office in nonpartisan elections
- register and vote as they choose
- assist in voter registration drives
- express opinions about candidates and issues
- contribute money to political organizations
- attend political fundraising functions
- attend and be active at political rallies and meetings
- join and be an active member of a political party or club
- sign nominating petitions
- campaign for or against referendum questions, constitutional amendments, municipal ordinances
- campaign for or against candidates in partisan elections
- make campaign speeches for candidates in partisan elections
- distribute campaign literature in partisan elections
- hold office in political clubs or parties

These federal and D.C. employees *may not*-

- use official authority or influence to interfere with an election
- solicit or discourage political activity of anyone with business before their agency
- solicit or receive political contributions (may be done in certain limited situations by federal labor or other employee organizations)
- be candidates for public office in partisan elections
- engage in political activity while:
- on duty
- in a government office
- wearing an official uniform
- using a government vehicle
- wear partisan political buttons on duty

Agencies/Employees Prohibited From Engaging in Partisan Political Activity

Employees of the following agencies (or agency components), or in the following categories, are subject to more extensive restrictions on their political activities than employees in other Departments and agencies:

- Administrative Law Judges (positions described at 5 U.S.C. § 5372)
- Central Imagery Office
- Central Intelligence Agency
- Contract Appeals Boards (positions described at 5 U.S.C. § 5372a)
- Criminal Division (Department of Justice)
- Defense Intelligence Agency
- Federal Bureau of Investigation
- Federal Elections Commission
- Merit Systems Protection Board

- National Security Agency
  National Security Council
- Office of Criminal Investigation (Internal Revenue Service)
- Office of Investigative Programs (Customs Service)
- Office of Law Enforcement (Bureau of Alcohol, Tobacco and Firearms)
- Office of Special Counsel
- Secret Service
- Senior Executive Service (career positions described at 5 U.S.C. § 3132(a)(4))

Permitted/Prohibited Activities for Employees Who May Not Participate in Partisan Political Activity
These federal employees *may*-

- register and vote as they choose
- assist in voter registration drives
- express opinions about candidates and issues
- participate in campaigns where none of the candidates represent a political party
- contribute money to political organizations or attend political fund raising functions
- attend political rallies and meetings
- join political clubs or parties
- sign nominating petitions
- campaign for or against referendum questions, constitutional amendments, municipal ordinances

These federal employees *may not*-

- be candidates for public office in partisan elections
- campaign for or against a candidate or slate of candidates in partisan elections
- make campaign speeches
- collect contributions or sell tickets to political fund raising functions
- distribute campaign material in partisan elections
- organize or manage political rallies or meetings
- hold office in political clubs or parties
- circulate nominating petitions
- work to register voters for one party only
- wear political buttons at work

Penalties for Violating the Hatch Act
An employee who violates the Hatch Act shall be removed from his or her position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

Frequently Asked Questions and Answers For Employees Who May Engage in Partisan Political Activity
Listed below are answers to some of the most frequently asked questions about political activity by federal employees.

Question: Can I make a contribution to the campaign of a partisan candidate, or to a political party or organization?

Answer: Yes. A federal employee may contribute to the campaign of a partisan candidate, or to a political party or organization.

Question: If I have a bumper sticker on my personal car, am I allowed to park the car in a government lot or garage, or in a private lot/garage if the government subsidizes my parking fees?
Answer: Yes. An employee is allowed to park his or her privately owned vehicle with bumper sticker in a government lot or garage. An employee may also park the car with a bumper sticker in a private lot or garage for which the employee receives a subsidy from his or her agency.

Question: Can I help organize a political fundraiser?
Answer: An employee is allowed to organize a fundraiser, including supplying names for the invitation list, as long as he or she does not personally solicit, accept, or receive contributions.

Question: Can my name appear on invitations to a political fundraiser as a sponsor or point of contact?
Answer: No. An employee's name may not be shown on an invitation to such a fundraiser as a sponsor or point of contact.

Question: Can I speak at a political fundraiser?
Answer: An employee is allowed to give a speech or keynote address at a political fundraiser, as long as he or she is not on duty, and does not solicit political contributions.

Question: If I'm going to speak at a political fundraiser, what information about me can be printed on the invitations?
Answer: An employee's name can be shown as a guest speaker. However, the reference should not in any way suggest that the employee solicits or encourages contributions. Invitations to the fundraiser may not include the employee's official title; although an employee who is ordinarily addressed with a general term of address such as "The Honorable" may use, or permit the use of, that term of address on the invitation.

Question: Can I attend a state or national party convention? If so, in what capacity?
Answer: Yes. A federal employee may serve as a delegate, alternate, or proxy to a state or national party convention.

Question: If I run as a candidate for public office in a nonpartisan election, does the Hatch Act allow me to ask for and accept political contributions?
Answer: An employee who is a candidate for public office in a nonpartisan election is not barred by the Hatch Act from soliciting, accepting, or receiving political contributions for his or her own campaign.

Question: May I distribute brochures for a political party to people arriving at a polling place on Election Day?
Answer: Yes. An employee may stand outside a polling place on Election Day and hand out brochures on behalf of a partisan political candidate or political party.

Answers to other questions about allowable political activity by federal employees can also be found in Hatch Act regulations in title 5 of the Code of Federal Regulations. Questions can also be submitted to OSC for an advisory opinion.

Advisory Opinions
OSC issues advisory opinions to persons seeking advice about political activity under the Hatch Act. You may request such advice by phone, fax, mail or e-mail.

Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

Tel: (800) 85-HATCH or (800) 854-2824
(202) 653-7143

Fax: (202) 653-5151
E-mail: hatchact@osc.gov

How to File a Complaint Alleging a Violation of the Hatch Act
Filers alleging a violation of the Hatch Act may use Form OSC-11 (Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity) to submit their allegation to OSC. Form OSC-11 can be printed from OSC's website at http://www.osc.gov. Form OSC-11 must be used if filers wish to include other, non-Hatch Act allegations – e.g., a prohibited personnel practice – in their complaint. If filers use another format to submit a Hatch Act violation, the following information should be included:

- name, mailing address, and telephone number of the complainant, and a time when the complainant can be safely contacted, unless the matter is submitted anonymously;
- the department or agency, location, and organizational unit complained of; and
- a concise description of the actions complained about, names and positions of employees who took these actions, if known to the complainant, and dates, preferably in chronological order, together with any documentary evidence the complainant may have.

Complaints should be sent to: Hatch Act Unit, U.S. Office of Special Counsel, 1730 M Street, N.W., Suite 201, Washington, DC 20036-4505.

Enforcement
When warranted after investigation of an alleged Hatch Act violation, OSC will prosecute violations before the Merit Systems Protection Board. When violations are not sufficiently egregious to warrant prosecution, OSC may issue a warning letter to the employee involved.

USERRA

The Uniformed Services Employment and Reemployment Rights Act (USERRA) prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. USERRA prohibits an employer from denying any benefit of employment on the basis of an individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. USERRA also protects the right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training.

OSC is not authorized to receive a USERRA complaint directly from the claimant. Instead, the claimant must first file his or her complaint with the Department of Labor's Veterans' Employment and Training Service (VETS). If VETS is unsuccessful in resolving the complaint, the claimant may request that VETS refer the complaint to OSC. If the Special Counsel believes there is merit to the complaint, OSC will initiate an action before the Merit Systems Protection Board and appear on behalf of the claimant. The successful claimant is entitled to receive the employment benefits that he or she was denied as the result of the agency's violation of USERRA. Additionally, a prevailing claimant is entitled to attorney's fees, expert witness fees, and other litigation expenses.

If you have any questions about OSC's role in enforcing USERRA, you can contact OSC's USERRA Coordinator by telephone at (202) 653-6005, or by e-mail at userra@osc.gov. In addition, the Department of Labor's Veterans' Employment and Training Service maintains a home page at http://www.dol.gov/vets. The VETS home page contains an interactive guided program that provides valuable information and answers questions about USERRA.

Federal Labor Relations Authority

The Federal Labor Relations Authority (FLRA) was established by the Civil Service Reform Act of 1978. It is charged with providing leadership in establishing policies and guidance relating to Federal sector labor-management relations and with resolving disputes under and ensuring compliance with Title VII of the Civil Service Reform Act of 1978, known as the Federal Service Labor-Management Relations Statute (Statute).

The FLRA represents the federal government's consolidated approach to its labor-management relations. It is "three agencies consolidated in one," fulfilling its statutory responsibilities primarily through three independent operating components: the Authority, the Office of the General Counsel, and the Federal Service Impasses Panel. It also supports two other components, both of which were established within the FLRA by the Foreign Service Act of 1980: the Foreign Service Impasse Disputes Panel and the Foreign Service Labor Relations Board.

The Authority is a quasi-judicial body with three full-time Members who are appointed for five-year terms by the President with the advice and consent of the Senate. One Member is appointed by the President to serve as Chairman of the Authority and as the Chief Executive and Administrative Officer of the FLRA. The Chairman also chairs the Foreign Service Labor Relations Board.

The Authority adjudicates disputes arising under the Statute, deciding cases concerning the negotiability of collective bargaining agreement proposals, appeals concerning unfair labor practices and representation petitions, and exceptions to grievance arbitration awards. Consistent with its statutory charge to provide leadership in establishing policies and guidance to participants in the Federal labor-management relations program, the Authority also assists Federal agencies and unions in understanding their rights and responsibilities under the Statute, and helps them improve their relationships so they can collaboratively resolve more of their problems without adjudicatory intervention.

Office of the General Counsel

The Office of the General Counsel (OGC) is the FLRA's independent investigator and prosecutor. The General Counsel, who is appointed by the President with the advice and consent of the Senate for a five-year term, is responsible for the management of the OGC, including the management of the

FLRA's seven Regional Offices. The General Counsel, through the seven Regional Offices, is initially responsible for processing unfair labor practice (ULP) allegations and representation matters filed with the FLRA. As to ULP matters, the Regional Offices investigate, settle, and determine whether to dismiss or prosecute ULP charges. The General Counsel also decides appeals of a Regional Director's decision not to issue a ULP complaint. The Regional Offices also ensure compliance with all ULP orders issued by the Authority. The resolution of representation matters includes, among other things, conducting elections and making appropriate unit determinations. The Office of the General Counsel encourages the use of various alternative dispute resolution techniques in striving to help parties in the Federal sector achieve a stable and productive labor-management relationship. This is accomplished through the use of facilitation, intervention, training and education programs.

Federal Service Impasses Panel

The Federal Service Impasses Panel (the Panel) is comprised of seven Presidential appointees who serve on a part-time basis, one of whom serves as Chairman. The Panel resolves impasses between Federal agencies and unions representing Federal employees arising from negotiations over conditions of employment under the Federal Service Labor-Management Relations Statute, the Federal Employees Flexible and Compressed Work Schedules Act, and the Panama Canal Act of 1979. If bargaining between the parties, followed by mediation assistance, proves unsuccessful, the Panel has the authority to recommend procedures and to take whatever action it deems necessary to resolve the impasse. The Panel's staff also supports the Foreign Service Impasse Disputes Panel in resolving impasses arising under the Foreign Service Act of 1980.

Foreign Service Labor Relations Board

The Foreign Service Labor Relations Board (the Board), which is composed of three Members appointed by the Chairman of the Authority, was created by the Foreign Service Act of 1980 to administer the labor-management relations program for Foreign Service employees in the Agency for International Development, and the Departments of State, Agriculture, and Commerce. The Board is supported by the staff of the FLRA. The FLRA Chairman serves as Chairman of the Board and the FLRA General Counsel serves as General Counsel for the Board.

Foreign Service Impasse Disputes Panel

The Foreign Service Impasse Disputes Panel (the Disputes Panel) was created by the Foreign Service Act of 1980. It consists of five part-time members appointed by the Chairman of the Foreign Service Labor Relations Board (the FLRA Chairman). The Disputes Panel resolves impasses between Federal agencies and Foreign Service personnel in the Agency for International Development and the Departments of State, Agriculture and Commerce over conditions of employment under the Foreign Service Act of 1980. The staff of the Federal Service Impasses Panel supports the Disputes Panel.

Types of Cases Adjudicated

There are four major categories of cases that come before the Authority Chairman and Members for resolution:

- representation
- arbitration
- negotiability
- unfair labor practice

FLRA regulations also permit the General Counsel, the Assistant Secretary of Labor, or the Federal Service Impasses Panel to refer for review and decision or general ruling any case involving a major policy issue that arises in a proceeding before any of them.

Decisions of the Authority are published and are available on the FLRA website at http://www.flra.gov. If you are unable to find a particular Authority decision, contact the Case Control Office for assistance.

Following issuance of a final Authority decision or order, a party can move for reconsideration if it can establish extraordinary circumstances. Motions must be filed within 10 days after service of the Authority's decision and must satisfy the requirements in section 2429.17 of the Regulations.

Any party aggrieved by an Authority decision, with the exceptions noted below, may institute an action for judicial review within 60 days after the decision issues. The Authority may also seek enforcement of its orders, temporary relief or restraining orders in the appropriate United States court of appeals. The Office of Solicitor represents the Authority in court proceedings.

Representation Cases

Applications for review of a Regional Director's Decision and Order are filed with the Case Control Office. Applications must be filed within 60 days of the Decision and Order and must meet the requirements set out in section 2422.31 of the Regulations. Neither the filing nor granting of an application for review operates to stay any action ordered by the Regional Director unless the Authority specifically orders a stay.

The Authority grants review of a Regional Director's Decision and Order on limited grounds and only when:

- the Decision and Order raises an issue for which there is an absence of precedent;
- established law or policy warrants reconsideration; or
- there is a genuine issue over which the Regional Director has failed to apply established law, committed a prejudicial procedural error, or committed a clear and prejudicial error concerning a substantial factual matter.

After an application is filed, the Authority may take one of several actions. It may deny the application or it may decide not to undertake review. In both instances, the Regional Director's Decision and Order stands. When an application for review is granted, the Authority will either resolve the issues based on the existing record or request that the parties to a case provide additional briefs on specified issues. On occasion, the Authority will seek input from other interested persons. Notices describing the issues on review are published in the Federal Register. Decisions of the Authority on representation matters are generally not subject to judicial review.

Arbitration Appeals

Either an agency or a union may appeal an arbitrator's decision within 30 days from the date the award is served. Exceptions to arbitration awards are filed with the Case Control Office and must meet the requirements specified in Part 2425 of the Regulations. Once properly filed, the Authority will review an award to determine whether the award is deficient because:

- the award is contrary to any law, rule or regulation
- the award fails to draw its essence from the collective bargaining agreement
- the award is based on a nonfact

- the award violates public policy
- the arbitrator denied a party a fair hearing
- the arbitrator exceeded his or her authority
- the award shows bias
- the award is ambiguous, incomplete or contradictory

The Authority will not consider exceptions to an award relating to actions based on unacceptable performance that are covered under 5 U.S.C. § 4303; removals, suspensions for more than 14 days, reductions in grade or pay, or furloughs of 30 days or less that are covered under 5 U.S.C. §7512, and matters similar to those covered under 5 U.S.C. §§ 4303 and 7512 that arise under other personnel systems. Challenges to these actions may be taken elsewhere.

Authority decisions involving exceptions to arbitration awards are not subject to judicial review, unless the decision involves an unfair labor practice under section 7118 of the Statute.

Negotiability Cases

A union may file a petition for review challenging either an agency head's disapproval of negotiated contract language or an agency's claim that bargaining proposals are contrary to law, rule or regulation. Petitions for review are filed with the Case Control Office and must meet the requirements contained in Part 2424, Subpart C of the Regulations. Forms and checklists are available to assist with filing petitions for review, statements of position and reply briefs.

Shortly after a petition is filed, the Case Control Office contacts the parties in each case and schedules a Post-Petition Conference with representatives of each party. The representatives must be prepared and authorized to discuss such matters as:

- the meaning of the proposal or provision in dispute
- any disputed factual issues
- negotiability dispute objections and bargaining obligation claims
- whether the proposal or provision in dispute is also involved in an unfair labor practice charge, grievance or impasse procedure

Conferences are conducted by Authority staff members. A representative of the Collaboration and Alternative Dispute Resolution Program (CADRO) may also be present to provide information on ADR services and offer settlement assistance. Following the conclusion of the Conference, a report is served on the parties and the filing of position statements commences. After the position statements have been filed, and the entire record is reviewed, the Authority issues a decision. The decision will include, as appropriate, a bargaining order, a direction to rescind a disapproval, a statement that a matter is bargainable at the election of an agency, or an order dismissing the petition for review.

Unfair Labor Practice Cases

The Statute sets forth many rights and obligations that are enforced through an unfair labor practice action. Guidance and Manuals prepared by the Office of General Counsel provide a great deal of information on those rights and obligations. If an individual employee, a union, or an agency believes that an unfair labor practice has been committed under section 7116 of the Statute, that party should contact the appropriate Regional Office for assistance. The Regional Offices are responsible for investigating and processing charges that unfair labor practices have been committed.

In almost all instances, investigations of alleged unlawful conduct, issuance of complaints by Regional Directors and actions taken by an Administrative Law Judge, up to and including preparation of a recommended decision, occur before the Authority's involvement in an unfair labor practice complaint. On occasion, the Authority becomes involved at earlier stages of an unfair labor practice proceeding. For example, the Authority must approve a formal settlement agreement and it must approve a General Counsel request to seek temporary relief, such as a restraining order.

Exceptions to a recommended decision of an Administrative Law Judge (ALJ) must be filed with the Case Control Office and must meet the requirements in Section 2423.40 of the Regulations. Any exception that is not specifically argued is deemed to be waived. When no exceptions to a decision of an Administrative Law Judge are filed, the findings, conclusions and recommendations of the Judge become, without precedential significance, those of the Authority. When exceptions are filed, the Authority, upon review of the recommended findings and conclusions, issues a decision that affirms or reverses, in whole or in part, the decision of the Judge. In limited circumstances, the Authority will also render a decision in a stipulated unfair labor practice, without a prior decision by an Administrative Law Judge, where the case is transferred directly to the Authority.

If an unfair labor practice has been committed, the Authority will issue an order requiring the party to cease and desist from the unlawful conduct and to take appropriate remedial actions. If there is a finding that no unfair labor practice has been committed, the Authority will dismiss the complaint.

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